

# UTAH PROSECUTION COUNCIL MEETING PROPOSED AGENDA

**Wednesday, June 28, 2017, 9:30 a.m.**  
**Wasatch County Search and Rescue Building**  
**1359 S. US Highway 40**

(As you come into the complex stay straight. The Search and Rescue Building will be straight in front of you. If you take the curve, you will be at the District Court/Sheriff Building. Their address is 1361 South Highway 40.)

*Pre-meeting Reminder: The meeting is recorded and the equipment is pretty sensitive. It does pick up sidebar conversations.*

1. Approval of the minutes from the April 26, 2017 meeting - Steve *Tab A*
2. Financial Report - Bob
  - a. Conference Financial Reports, *Tab B*
  - b. Surcharge FY17 and Year to Date, *Tab C*
  - c. FY17 Budget Comparison Report, *Tab D*
  - d. FY18 Proposed Budget, *Tab E*
3. Training Committee Report - Steve
  - a. Legislative Updates
  - b. Upcoming Conferences, 2017/18 Conference Schedule, *Tab F*
4. UPAA Report - Marilyn/Haley
  - a. UPAA Conference Recap
5. Resource Prosecutor Reports
  - a. Tyson: *Tab G*
  - b. Replacing the Domestic Violence/Sexual Assault Resource Prosecutor
6. IT Issues - Ron and Bob
  - a. PIMS
  - b. Case Management RFP
7. Other Business
  - a. UPC Region I Election Results
  - b. Additional GRAMA Request, State Records Review Committee, *Tab H, Tab I*
  - c. JRJ Loan Review Committee
  - d. New County Attorney's
  - e. Meeting with UPC and AG's Office
8. Next meeting: October 4, 2017, 8:30 a.m., St. George
9. Adjourn

## Director's Summary of UPC Agenda Items

1. Approval of the Minutes.
  - a. See the enclosed pending minutes from the April 26, 2017 , meeting. **Tab A**
2. Financial Report - Bob
  - a. Conference Financial Reports, **Tab B**
    - i. Spring Conference
    - ii. Regional Updates
    - iii. UPAA
  - b. Surcharge FY17 and Year to Date, **Tab C**
    - i. Monthly totals since last meeting.

(1)	Jan 17: \$37,157.86	Jan 16: \$40,036.65
(2)	Feb 17: \$42,183.85	Feb 16: \$49,969.33
(3)	Mar 17: \$47,396.61	Mar 16: \$53,788.07
(4)	Apr 17: \$49,389.48	Apr 16: \$48,853.94
  - c. FY17 Budget/Comparison Report, **Tab D**
    - i. Still waiting for final, year-end data from finance.
  - d. Proposed FY18 Budget, **Tab E**
    - i. ***See Memo. It is bleak and will require a good deal of discussion.***
3. Training Committee Report - Steve Garside
  - a. Legislative Updates
    - i. We had some places that did not receive word that we were coming or they didn't have enough time to get it on their schedules, so not very many people showed up.
    - ii. We will set the schedule at the beginning of 2018 and verify that each jurisdiction has received word.
  - b. 2017/18 Conference Schedule, **Tab F**
    - i. UMPA Conference
      - (1) August 3-4, 2017
      - (2) St. George Courtyard
    - ii. Basic Prosecutor Course
      - (1) August 14-18, 2017
      - (2) University Inn, Logan
    - iii. Expert Witness Training - SLCD Primary Sponsor
      - (1) September 6-7, 2017
      - (2) Salt Lake City
    - iv. Fall Conference
      - (1) October 4-6, 2017
      - (2) St. George
    - v. Civil Conference
      - (1) October 18-20, 2017
      - (2) St. George

- vi. Title 3 Conference - SLCDCA Primary Sponsor
    - (1) October TBD
    - (2) Salt Lake City
- 4. UPAA Report - Marilyn/Haley
  - a. UPAA Conference
    - i. Officer Brody Young gave an inspiring presentation about his experience being shot.
    - ii. Kevin Miller spoke on customer service, leadership development.
- 5. Resource Prosecutors
  - a. Tyson: **Tab G**
  - b. The job announcement for the Trauma, Sexual Assault/DV Prosecutor will be issued this week. It will close two weeks after the notice is published.
- 6. IT Issues
  - a. PIMS
    - i. Will continue to be available but we anticipate few will continue to use it.
    - ii. No new developments.
  - b. Case Management
    - i. After a long process the Evaluation Committee awarded the RFP to Journal Technologies for the purchase of eProsecutor.
    - ii. The 5-year contract exceeds the amount of the grant. Therefore, the balance will have to be paid by each jurisdiction/user.
      - (1) Because the RFP is still open, I can't disclose the winning bid amount yet.
    - iii. First substantial conversation with Journal Technologies was Thursday, June 22, 2017. This process is not going to be as easy as hoped. Journal is "not making any money" on this contract so is not willing to negotiate on most matters. Chris Jennings from purchasing was on the phone with me. After the call he was not overly optimistic.
      - (1) By disclosing the amount of the grant and the date by when it must be spent, UPC has given all the negotiating power to Journal.
        - (a) I didn't point out that it was the previous contract analyst that was advising me on the RFP that said to put it in there as he's since been fired.
        - (b) Chris said that he didn't see that he would have much to contribute to further discussions with Journal. In other words, he is done advising me as he is an analyst and not a contract negotiator or drafter. But then neither am I.
- (2) Contract issues
  - (a) State Contracting's Position
    - (i) The situation UPC is in is not unusual in that a lead agency negotiates and enters into a "master contract" with various agencies entering into "sub-contracts"

with the vendor. That is what needs to happen here as each jurisdiction may have individual needs or requirements that must be met. Further, that was stated in the RFP.

- (b) Journal Technologies Position
  - (i) They are not willing to negotiate individual contracts with each jurisdiction as they did not factor those attorney costs into their bid.
  - (ii) They want to enter into a contract with UPC for the purchase and then create a one-size-fits-all user contract for the jurisdictions.
  - (iii) Journal's standard contract will have to undergo significant revisions.
  - (iv) Journal's attorney was on the phone as well. As we discussed having to make these kinds of revisions to account for multiple users, his only comment was that it could be done but would require substantial work.
- (c) Drafting a new contract
  - (i) Chris strongly urged me to draft our own version of the contract in order to get us back in a position of power and to get the terms we want in the contract.
  - (ii) While it's a valid point I am not in a position to do that. I don't have the technical expertise or the time. And I'm afraid the process may not have the time if we allow each jurisdiction to participate in the contract drafting process.
  - (iii) I will reach out to contract attorney's in the AG's office for help as well as reviewing the contracts SLCounty and Utah County's have with Journal.
- (d) Product will be one-size-fits-all
  - (i) It will be Utah prosecutor needs based but not much individualized tailoring will be possible.
- (e) We do not own the product.
- (f) Users
  - (i) Those people who job share, will have to have separate user license.
  - (ii) They have built into their bid the ability for limited number of law enforcement users.
- (g) Willing to abide by Utah law.
- (h) Willing to mediate and arbitrate in Utah.

iv. Justware v. eProsecutor

- (1) There will be no ability to share data between users of these two products until all jurisdictions are on eProsecutor.

- (2) Journal will convert data free of charge. Converting customized templates, forms, “program” functionality things, etc. are not free. Box Elder County reports that it can get pretty costly.
    - (3) A major purpose of the grant was to unify state prosecutors onto the same system and so they could share data with each other.
      - (a) I don’t know if this will impact the grant or not. I am trying to get that answer.
  - v. Ron and I will be having a “technical” phone call with Journal to discuss the technical aspects of the program. I’m trying to schedule it before Council meeting.
- 7. Other Business
  - a. Region I UPC Representative
    - i. Jann Farris was voted to remain in his position.
  - b. GRAMA and State Records Issues
    - i. GRAMA Request #17-152, *Tab H*
      - (1) On June 5, 2017, Mr. Berkovich filed a GRAMA request asking for a copy of “the email or email setting/confirming the date, time and place of the October 21, 2015, meeting, which would have been sent/received by Church some time after the early morning of October 19, 2015, and before close of business that same day.”
      - (2) I provided the only e-mail sent or received on October 19, 2015 that met his request to the AG’s office.
      - (3) They provided a copy to Mr. Berkovich.
    - ii. State Records Committee False Affidavit Issue, *Tab I*
      - (1) On June 22, 2017 Mr. Berkovich sent an e-mail with an attached packet of information to the State Records Committee stating that there is “reasonable suspicion to believe that a false affidavit” was provided to him by the AG’s office in connection with a prior GRAMA request.
      - (2) He asked the records committee to reopen the file in light of his concerns.
      - (3) On June 23, 2017 the State Records Committee Executive Secretary responded, telling him that the only method to appeal a decision of the records committee is to appeal to District Court. He had 30 days from the date of the denial letter, April 11, 2017, to petition for judicial review.
      - (4) His “motion for reconsideration” will be briefed to the Committee at their next meeting on July 13, 2017.
        - (a) I will attend that meeting with the AG GRAMA attorney.
      - (5) Also, a copy of his letter will be placed in his file.
    - iii. Lonny Pehrson, AG GRAMA attorney, are staying in touch.
  - c. JRJ
    - i. The review committee met on June 19, 2017 to distribute \$35,263.00
      - (1) 6 public defenders applied

- (a) All received an award
    - (2) 24 prosecutors applied
      - (a) 13 received an award
      - (b) The formula to determine the amount of the award, based on modified adjusted gross income (MAGI) and other factors did not allow for 9 prosecutors to receive an award.
    - ii. DOJ was going to require that agencies match future awards. It appears that they are no longer going to require that. Instead, each jurisdiction is going to have to apply for an award. I haven't read all the details yet.
  - d. New County Attorneys.
    - i. Summit County
      - (1) Margaret Olson
    - ii. Juab County
      - (1) ??
    - iii. Wayne County
      - (1) ??
  - e. Meeting with UPC and the AG's Office
    - i. Spence Austin, Missy Larsen (Chief of Staff), Steve Garside, Barry Huntington and Bob Church met Monday, June 26, 2017.
    - ii. It was a good meeting where multiple ways to improve communication between the AG's office and UPC can take place were discussed.
    - iii. The AG's office would like to have a representative sit on the interview panel for the SADVRP.
    - iv. Continue quarterly meetings for the near future.
    - v. UPC to draft MOU to be entered into with the AG's office to help define policies and procedures UPC will follow in light of the unique relationship UPC has with the AG's office.
    - vi. UPC and AG to meet to discuss what DV training the AG's office will be taking on.
8. Next Meeting: October
- a. October 4, 2017
  - b. St. George, UT
9. Adjourn

*Tab A*

*These pending minutes have not been approved by the Utah Prosecution Council and are subject to change until approved and adopted by the Council.*

**UTAH PROSECUTION COUNCIL**  
**Wednesday, April 26, 2017**  
**Salt Lake District Attorney County's Office**  
**111 E. Broadway Ste., 400**  
**Salt Lake City, Utah**

***PENDING MINUTES***

**COUNCIL MEMBERS (DESIGNEE) PRESENT:**

Steven Garside, Chair, Layton City Attorney  
Haley Christensen, UPAA Chair, Utah County Attorney's Office  
Robert Cosson, St. George City Chief Prosecuting Attorney  
Jann Farris, Morgan County Attorney  
Greg Ferbrache, Deputy Utah Attorney General (*attending for Spencer Austin, designee of General Reyes*)  
Sim Gill, Salt Lake District Attorney  
Barry Huntington, Chair-elect Garfield County Attorney  
Scott Sweat, Wasatch County Attorney

**COUNCIL MEMBERS EXCUSED:**

Stephen Foote, Duchesne County Attorney  
Scott Stephenson, Deputy Director of P.O.S.T (*designee of Commissioner Keith Squires*)

UPC            Bob Church, Director  
STAFF:       Marilyn Jaspersen, Training Coordinator  
               Tyson Skeen, Staff Attorney  
               Ronald Weight, IT Director

GUESTS:     Edward Berkovich, Assistant West Jordan City Attorney  
               Jeff Buhman, Utah County Attorney  
               Paul Boyden, Executive Director, SWAP  
               Will Carlson, Deputy Salt Lake County District Attorney  
               Russell Smith, Deputy Utah Attorney General  
               Robert Van Dyke, Kane County Attorney

**I.        WELCOME & TENT CARDS**

- A.        The Council members were welcomed and the meeting convened.
- B.        Steve Garside explained that tent cards will now be set up at council meetings so it's clear who are council members and have UPC voting rights.

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II. APPROVAL OF THE JANUARY 20, 2017 MINUTES

- A. Barry Huntington made the motion to approve the minutes from January 20, 2017. Scott Sweat seconded the motion and it passed unanimously.

III. APPEARANCE BY ED BERKOVICH

*NOTE: At the last Council meeting the Council voted to invite Ed Berkovich to appear at the April 2017 meeting. Steve Garside sent the invitation to Mr. Berkovich. The following summary, while not verbatim is as close to what was said as possible.*

Mr. Berkovich to Steve Garside - He asked if he had received the memo he sent out last night? (April 25, 2017). Mr. Berkovich indicated that he felt there was evidence to suggest that he was working in an environment (at UPC) where, his supervisor, Bob Church & Marilyn Jaspersen would possibly collude in an act of dishonesty. Mr. Berkovich stated that he had outlined a set of facts and said, "you have no idea how that affects somebody's work environment and difficult it is to deal with. If anybody looks at the set of facts like the Chicago SWAG thing and the emails, it is a very difficult thing to be involved in."

Mr. Berkovich cited "basic psychology" that if someone is dishonest with another person that person is going to resent them because that person is going to reflect back on the dishonest act that person was engaged in.

Mr. Berkovich - So that was the tone and tenor of things at least after July 2015. Then we get to the missing information with the CLE evaluations and that was very suspicious. The very feedback that I provided was mirrored in one of Sim's deputies and his CLE evaluation went missing.

(Referring to events in Moab). Mr. Berkovich - People who were there know I was out of line. I will have to live with that. But I'm not going to be ashamed of it either for the rest of my life. So when I called attention to that, Marilyn attributed that to Ron which was not true. I only learned of that later when I asked Ron and Ron said he didn't prepare the evaluation summaries. There were specific comments on there that reflected Marilyn's work product. So I was suspicious about that. Then I asked the law clerk and the law clerk said that he prepared the summary but didn't get that one and so those comments were left off the comment sheet. In the United States, we are free to be suspicious and free to ask questions. I didn't feel I could ask questions of UPC and didn't feel like I could do that because of what happened at Chicago. So that was the work environment.

(Mr. Berkovich referred to a memo he sent to the Council the night of April 25, 2017.)

Mr. Berkovich - When it comes to the events in Moab, Bob clearly misled me to think I would have a say, to have the opportunity to defend myself [before the Council when they met to

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discuss his employment status in October, 2015]. That's in the chronology of the memo. I still can't believe that a body would meet and not, at least, hear what I had to say about the work environment. Especially, representing what Steve Schreiner texted to me, that part of the whole decision that the Council made with the vote to sever or a vote to make a change which indicates to me that there was more to the vote to sever then simply what happened in Moab. I should have had a say in it, that's my perspective. It's not just my perspective. As I mentioned, people are really astonished to learn that a whole process would be conducted to terminate someone without ever asking that person their side of it. For that it's more for you to live with than mine.

Mr. Berkovich asked the Council if there were any questions at this point.

Steve Garside - The Council anticipated a presentation from you and that is why the invitation was extended.

Mr. Berkovich - I have no idea what went on in the closed door session. I really don't know if Marilyn was consulted. I didn't receive any input. I really think I called into question those minutes the irregularities and nonfactual statements by Bob about the minutes that he admitted at the State Records Lab committee. For me it is hard to believe there are a lot of mistakes and a lot of statements that made me think I would have a chance to defend myself. I didn't have the chance to defend myself at the open session on Oct. 21<sup>st</sup> special Council meeting. I think the process was flawed. If it is true that where there were times that I would be colluded toward with dishonesty by my supervisor and support, I think Bob was compromised. He was the one that controlled the information flow to all of you. I have a sense that I'm leaving things out. I'm not referring to my notes. But it's sort of like it is in the memo. You know, you have no idea...

(Sim Gill offered to give Mr. Berkovich a copy of the memo.)

Let me get to this situation where I'm having to get approval for presentations, however many states away like Kansas City which was a completely an unworkable thing. When I asked Bob about it, if I had to keep doing stuff like that he said something about that's his alpha male dominance which is unhealthy. So, those are some of the issues. So there definitely probably not a healthy work environment. I will give Bob credit for getting out of the way. He, at least, let me do stuff.

Mr. Berkovich - Then we get to the summer appointment by UMMA of my designation. Before I even suggested that Bob made a unilateral decision or two people, I GRAMA requested the UPC minutes and votes to see if you all voted on the UMMA designation for me to be on this board. It was silent, State Records says that nobody voted. There were no

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responsive records. There were no waivers which indicates to me that Bob might of picked up the phone and consulted with one of you and said that he (Mr. Berkovich) can't be on it. You can't do that unilaterally, it's an unauthorized act. You couldn't do that. Even if you had voted on it, it would not of been statutorily valid. Because once a designation has been made, it is made. It is not voted on by the Council. I have the proof in the statute that you don't have the power to accept or reject it. UMMA was caught flat footed and some of them are not thrilled about what happened. They did not know that they had the statutory authority to say this is our designation and we're keeping him. I don't think a director should go around making acts by an unauthorized vote. That is not supported by an unauthorized vote. So, these are some of the highlights. I give you credit for reading my memorandum and I will take any questions on memorandum and there only things in there based on record fact. I come out of rooms and they stop talking. That's fine, maybe they were talking about something personal. I don't think you're fully informed. Some of the statements are flat false and not open to interpretation. I'm just keeping it to the scope of what you invited me here to talk about. You may or may not have realization of the open violations or recently the Open Meeting Act violation but you didn't invite me here to talk about that.

Steve Garside - As you know you were free to present those. I don't if anyone on the Council has any questions for you. I'm not sure if anybody on the council has had the opportunity to read the memo. Or whether there's any action on that would be for another meeting because they haven't had a chance to digest that. Does anybody on the council have any questions for Ed?

Sim Gill to Mr. Berkovich - I have just a general question. As far as your relationship with UPC originally that was the nature of a relationship to a grant, right?

Bob Church to Sim Gill - It was funded by grant, yes.

Sim Gill to Mr. Berkovich - The terms of the employment, the grant that was not a merit position was it?

Bob Church to Sim Gill - No. It was an at-will employee.

Mr. Berkovich - It's my understanding there's no grant distinction, if your at-will, you're at will.

Sim Gill to Mr. Berkovich - I did get this last memo, email and I did scan through it late last night. Does this cover from your perspective things you wanted to cover and what you wanted the council to be aware of? Do you feel this memo covers the things you wanted to communicate to the Council?

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Mr. Berkovich to Sim Gill - Yes, regarding what Steve invited me here to talk about. I was very careful to... there were other obvious things, but I'm not going to talk about them in terms of drama.

Sim Gill to Steve Garside - You just wanted him to have the opportunity to come and communicate his concerns from the termination from that action?

Steve Garside to Sim Gill - And the UMMA issue.

Sim Gill to Mr. Berkovich - Within the context of those two issues, do you feel comfortable that you've had your say? Does this memo cover the issue with the severance of employment and the UMMA issues for you?

Mr. Berkovich to Sim Gill - Yea, but there is one thing I'd like to ask.

Mr. Berkovich to Greg Ferbrache - Do you remember, did you ever tell Bob I was out in the state working too much?

Greg Ferbrache to Mr. Berkovich - At this point, I'm not going to answer any questions. The forum for this was for you to present not to be doing a deposition or anything.

Mr. Berkovich - I know. You guys, I'm not suing anybody. The only reason I bring that up is because this is something I felt like I was being torpedoed. Bob would say the office feels you're gone a lot and Greg may take that away from us. This is what resource prosecutors you know they're only in the office only a few days a week. I actually can leave it at the memo.

Sim Gill to Mr. Berkovich - I want to make sure that you write a memo and then you send it, you may think about it - I just want to make sure for the purpose of this meeting and that everything you feel you need to share and if there is need for discussion people may not have fully read it and if there is a discussion I wanted to know if there is anything that needs to be added to be brought out now.

Mr. Berkovich to Sim Gill - I can't think of anything comprehensive or specific. If there's anything else, I will let you know. Regarding any and it hasn't happened here yet, you know this sort of how dare you - hands on hips, how dare you suggest this, you know what was said about me. I have no idea what was said about me. I have given you reason to believe that maybe, at least, one for sure inaccurate statements and other written untrue statements there is reason to doubt the quality of the information you have in the emergency council meeting, specifically, because Bob controlled the flow of the information to the council

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meeting. I can just point to something pretty darn easily and that this is just not true with this thing about the scheduled trainings. It's hard to believe that that's an unconscious mistake given how the Denver thing was. Do I need to elaborate on that?

Mr. Berkovich to Steve Garside - Do you know and established now that there were subsequent trainings scheduled? Are you satisfied, based on a separate email, that I had trainings scheduled subsequent to my terminating?

Steve Garside to Mr. Berkovich - Oh yes.

Mr. Berkovich - It's just hard for me to believe, that's just a mistake. Especially as important as somebody's job and life it seems like some things were fine tooth combed everything.

Steve Garside to Mr. Berkovich - I pursued that. I received a satisfactory response. To me things could be, not that there was nothing scheduled, but there wasn't anything scheduled that couldn't be rescheduled or taken care of in another way.

Mr. Berkovich to Steve Garside - That is the information you got?

Steve Garside to Mr. Berkovich - Yes.

Mr. Berkovich to Steve Garside - It's clear those trainings were canceled. That's not disputable or debatable.

Steve Garside to Mr. Berkovich - I understand. Does any other member of the Council have any questions or followup of Mr. Berkovich? If not, my proposal to the council, for those who haven't had the opportunity to go through that and if someone at that time feels it needs to be brought up again on our next agenda or again at an earlier meeting whether it be open or an executive session, obviously, we will be entertained to do that and be willing to do that.

Mr. Berkovich to Steve Garside - Do you have my UMMA memorandum, my UMMA email? Are you aware of it? The whole thing about the 83 minutes, are you aware of that?

Steve Garside to Mr. Berkovich - I don't have it with me and I know I have read it.

Mr. Berkovich to Steve Garside - So you understand about the 83 minute reference. I am designated (inaudible).

Mr. Berkovich - I can tell you this, I don't bear any ill will toward anybody including Bob or Marilyn at this point now that I have had my say. You can do what you want including

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nothing, I have a feeling that's the way it will go and that's perfectly fine with me. Just to have my say which I appreciate the invitation, I can't, but I'm not going to pretend that I wasn't suspicious and that I didn't think there weren't nonfactual statements made to me in collusion and those kind of things. The underlining subject of these things nobody cares about the transportation of sweaters to Chicago nobody cares about really in the long-run agendas, memorandum or the CLE comments but it's the culture if that was a completely candid work environment and who was really responsible for that and who took some heat for calling some attention to that. If you understand what I'm saying, I can say that. I appreciate my say. God bless all right? But I really think it needed to be said and if there's nothing to hide then nobody has a problem.

Steve Garside to Mr. Berkovich - Thank you.

Mr. Berkovich to Steve Garside - Thank you.

IV. BERKOVICH GRAMA REQUESTS

- A. Bob indicated Mr. Berkovich's GRAMA requests, UPC's responses, all e-mail traffic regarding the requests and the AG's response were included in the packet.

V. UPC CONFERENCES

A. Completed Conferences

Bob gave an in depth report on the following completed conferences. Please refer to the Director's Summary for details.

1. 2017 Conference Schedule:

a. Spring Conference:

(1) Spring Conference will be held the same time as the judicial conference on April 27, 28, 2017 at the Riverwoods Conference Center, Logan, UT. Bob reviewed the agenda. Remote broadcasting is being made available to SLDA's office, Utah County Attorney's office and the Attorney General's office at the College Drive location.

(2) Bob commented that this will be Paul Boyden's last legislative update as he will be retiring this year. Bob expressed a heartfelt appreciation to Paul for all his many years of service to UPC. He will be sorely missed.

(3) Bob, also, expressed thanks to all those who help with summarizing and compiling the summaries.

b. Regional Legislative Updates:

Will be held from May to June. The schedule will be forthcoming.

c. UPAA Conference:

The UPAA Conference will be held at the Uintah Conference Center,

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in Vernal, Utah on June 21-23, 2017. Haley and Marilyn reviewed the agenda.

d. UMPA Summer Conference:

This conference will be held on August 3-4, 2017 at the St. George Courtyard by Marriott. The planning committee has met and developed a draft agenda. The committee is in the process of confirming presenters.

e. Basic Prosecutor Course:

The course will be at USU - University Inn in Logan, Utah on August 14-18, 2017. The planning committee has met and have set this year's agenda.

f. Fall Prosecutors Training Conference:

This conference has been scheduled around the judicial conference as well.

It will be held October 4-6, 2017 at the St. George Hilton Garden Inn.

g. Government Civil Practice Conference:

This conference has been scheduled to be held October 18-20, 2017 at the St. George Hilton Garden Inn. The planning committee has yet to meet.

h. County Attorney's Executive Seminar:

The seminar will be held at the Dixie Center in St. George, Utah on November 16-17, 2017.

2. CLE Fee

- A. Bob stated that the Bar is *not* increasing the cost of processing CLE fees from \$15 to \$20 as he reported at last Council meeting. He apologized for the error. The rate is as required by State of Utah Supreme Court - Board of Continuing Legal Education. Rule 14-417 Miscellaneous Fees and Expenses requires that all Utah CLE sponsors who offer any course for a fee shall pay to the Board, within 60 days of presenting the course, a fee of \$1.50 per credit hour per attendee. The \$1.50 per credit hour fee with a cap at \$15.00 per attendee.

VI. FINANCIAL REPORT

Bob made the following financial report. Additional information is included in the Director's Summary.

A. Surcharge FY16/17 Report:

1. Surcharge receipts ended at \$47,396.61 as of March 2017. In comparison to the 2016 March surcharge receipts that end at \$53,788.07. Bob noted there is a drop of \$6,391.46 but was not overly concerned. He will continue to watch the receipts and keep the council apprised.

B. FY17 Budget/Comparison Report:

1. Bob stated that SWAP reimbursed UPC for the net cost of the 2016

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Government Civil Conference in the amount of \$12,545.31.

VII. TRAINING COMMITTEE REPORT

Steve Garside, UPC Training Committee Chair gave the following report.

- A. Steve confirmed what was reported under A.1.a-h.
- B. In addition to the training events mentioned above, the Council discussed a training on Expert Witness (DV cases) to be held at the Veridian Center on September 6-7, 2017. This is a joint venture between UPC and the SLDA's office. Also, a Title 3 Conference to be held November 8<sup>th</sup> was mentioned.
- C. Nominations were open to select a location for the 2018 Fall Prosecutor Training Conference. The Training Committee recommended the Provo Convention Center, Moab Valley Inn and a new Marriott property in Moab. Greg Ferbrache made the motion to narrow the location to Moab and leave it to UPC staff to determine either option 2 or 3 depending costs. Sim Gill seconded the motion and the motion carried unanimously.
- D. Next Training Committee meeting will be in Torrey, Utah on Oct. 16-17, 2017.

VIII. UPAA - Haley Christensen, UPAA Chair and Marilyn Jaspersen gave the following report.

- A. The UPAA conference will be held June 21-23, 2017 at the Uintah Conference Center in Vernal, Utah. The agenda has been finalized.

IX. RESOURCE PROSECUTORS REPORTS

- A. Tyson Skeen referred the Council to the TSRP report outlined in the handouts.
  - 1. Tyson indicated his goal is to train on drunk driver and lethal weapon courses.
  - 2. Replacing the domestic violence/sexual assault resource prosecutor (DVS/SARP)
    - a. HB0200 passed giving UPC dedicated funding of \$186,000 for a prosecutor to work with DPS to develop trauma informed training. The officers must be initially trained by July 2018 and detectives must receive advance training by 2019.
    - b. These funds will cover a Grade 5 attorney, a seasoned attorney, and would provide ongoing training for the trauma prosecutor including 3-4 conferences per year, some administrative expenses (i.e., phone, supplies) and some in-state travel.
    - c. Also, this person would do domestic violence training.
    - d. Funding will begin July 1, 2017. Currently, UPC office and staff have moved to College Drive in temporary offices on the second floor. There is no office available for the DVSARP. This position cannot be filled until permanent office space is secured. It's the understanding that permanent offices will be on the third floor and will be available

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sometime this fall. The position announcement will be sent out approximately 30 days prior to moving into permanent offices. Donna will be invited to participate in the interviews.

X. IT ISSUES

- A. In addition to the in depth report in the Director's Summary, Ronald Weight and Bob Church gave the following PIMS report.
  - 1. PIMS users continue to dwindle in number.
  - 2. Few offices will continue to use it.
- B. Case Management RFP
  - 1. Because of state purchasing statute, Bob was prohibited from giving out specific details at this point. However, the following items he was able mention.
    - a. RFP issued and vendors submitted proposals.
    - b. The evaluation committee met and reviewed the initial proposals.
      - (1) Voting Committee Members - after the contract is awarded, committee member names will be added to these minutes
        - (a) Two county attorneys
        - (b) Two city prosecutors
        - (c) Two admin personnel
        - (d) 1 IT person
      - (2) Non-Voting Members
        - (a) Bob Church - UPC
        - (b) Marilyn Jasperson - UPC
        - (c) Christopher Jennings - Contract Analyst
    - c. Those companies that achieved a minimum score of 700 have been invited to give a live presentation.
    - d. Live Presentation
      - (1) Tuesday, April 25, 2017
    - e. Cost Evaluation Meeting and Announcement of Award
      - (1) Tuesday, May 2, 2017. If all goes as hoped, Bob hopes to have a contract in place by the end of May.

XI. REPORTS FROM UPC REPS ON VARIOUS COMMITTEES

- In addition to the report in the Director's Summary, Bob Church made the following report.
- A. State Advisory Board on Children's Justice - Craig Johnson, Utah County
    - 1. The State Advisory Board on Children's Justice continues its support to CJs and victim's rights legislative efforts. This support has resulted in a significant \$120,000 donation from the LDS Church to fund new medical equipment at eight different CJs statewide.

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2. Additionally, the Rules of Evidence Committee has taken Rule 1102 proposed change seriously and has tasked one of their committee members with researching and obtaining additional data to present at their May meeting.
- C. Criminal Law Section, State Bar - Janise Macanas, AG's Office
  1. The Criminal Law Section are finalizing two CLE's, one the end May and another the end of June, 2017 for the section members. The topics, speakers, etc. were being finalized.
- D. Indigent Defense Trust Funds Board - Brody Keisel, Sanpete County
- E. Justice Court Subcommittee - Ed Montgomery, South Jordan City
- F. Sentencing Commission - Scott Garrett, Iron County

## XII. OTHER BUSINESS

- A. As Bob mentioned, UPC has temporarily relocated to the second floor of the AG's College Drive Campus. We've been told that we'll move to the third floor once the State Fire Marshall moves out.
  1. New address:
    - a. 5272 College Dr., Suite 201, Murray, UT 84123
  2. New phone numbers and email addresses
    - a. Bob: (801) 281-1212 / [rjchurch@agutah.gov](mailto:rjchurch@agutah.gov)
    - b. Marilyn: (801) 281-1208 / [mjasperson@agutah.gov](mailto:mjasperson@agutah.gov)
    - c. Tyson: (801) 281-1209 / [tskeen@agutah.gov](mailto:tskeen@agutah.gov)
    - d. Ron: (801) 281-1234 / [rweight@agutah.gov](mailto:rweight@agutah.gov)
- B. Election of UPC Region I Council Member
  1. Bob indicated that Jann Farris's term expires June 14, 2017. He sent a letter to all voting members of Region I and asked them to be prepared to nominate and vote on who their representative will be at UCDA's meeting on Thursday, April 27<sup>th</sup>. Region I include the following:
    - a. Box Elder County - Steven Hadfield
    - b. Cache County - James Swink
    - c. Davis County - Troy Rawlings
    - d. Morgan County - Jann Farris
    - e. Rich County - Gary Heward
    - f. Weber County - Chris Allred
  2. Open Meetings Act Review as it Pertains to the Council  
In addition to the report in the Director's Summary, Bob Church made the following report.
    - a. In accordance to the Open Meetings Act Bob reviewed procedures UPC will be taking when posting for UPC meetings. Please refer to the Director's Summary for details.
  3. Civility Discussion

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In addition to the report in the Director's Summary, Bob Church made the following report.

- a. Russell Smith, General Reyes designee, was placed in a difficult position at the last Council meeting as he had no knowledge about how the AG's office was using funds earmarked for training municipal and county prosecutors in the prosecution of domestic violence. There was an in depth and vehement discussion. Bob apologized for the misunderstandings and lack of civility to the Council at large and to Russell specifically. Going forward Bob proposed the following solution.
    - (1) Not discuss volatile issues that may affect a Council Member(s) unless the actual Council Member(s) is/are present.
    - (2) Table the issue for the next meeting if need be:
      - (a) When Council Members sends a designee, it is incumbent upon the Council Member to fully brief the designee on the issue so they can speak on behalf of the Council Member.
      - (b) Ask designee if they are familiar with the issue. Are they prepared to discuss this issue? Does he/she have authority to make a decision on this issue?
    - (3) If any of the answers are "no" Bob will suggest the issue be tabled.
    - (4) Sim Gill made a statement to the Council.
      - (a) This issue came out of new business. I pressed the conversation in open discussion and if somebody thought I was un-civil I will apologize.
      - (b) I meant no disrespect to the AG's office or General Reyes.
  - b. Specifically put Council Member on notice of any issue that may arise.
    - (1) Bob will try to make the Proposed Agenda and Director Summary clearer if there is an issue to be addressed.
    - (2) However, this could present a challenge if the issue arises during Council Meeting
4. Donation to the Utah Journal of Criminal Law
- In addition to the report in the Director's Summary, Bob Church made the following report. Bob clarified that not every prosecutor, counsel and judge in the state receives a copy as mailing list was outdated. The mailing lists are now being updated. Bob also noted that Journal has never charged subscription fees have never been charged for the Journal and the preference is not to have to charge a fee. Currently, the online version is available but

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it receives very little traffic. There is no one who actively monitors the webpage or who can send out notices that an online edition is available. Bob has drafted a letter to the large criminal defense firms in the state seeking donations from them. For their donation, they will receive free advertising space in the Journal.

a. Discussion on the issue of making a donation but for now, no donation will be made.

5. Survey Monkey

Bob indicated he has sent out the survey monkey and has received many responses. He is in the process of creating new mailing lists, but will have to work on it in small steps.

6. In light of Mr. Berkovich's appearance, Bob Church made the following statement.

Bob Church - He feels that his and Marilyn's integrity has been called into question today. He isn't sure if today is the best time to address that or schedule another time to discuss the issues raised or if it needs to be in an executive meeting. He is prepared to address and respond to the issues raised by Mr. Berkovich.

Sim Gill - I think a time to review the documentation/e-mail sent by Mr. Berkovich would be good.

Scott Sweat - I think if the council feels we need to have a response from Bob and Marilyn to Mr. Berkovich's issues we will schedule something in the future.

Bob Church - The Chair of the council, Steve Garsid, has been very supportive through this process and knows more details than may have been in Mr. Berkovich's materials.

7. Meeting With the AG Office and UPC Staff

a. Steve Garside is attempting to set up a meeting between UPC and the AG's office to talk about various issues.

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XVI. NEXT MEETING

Wednesday, June 28, 2017, 1:00 p.m.

Wasatch County Attorney's Office Hosting

LOCATION TBD

XVI. ADJOURN

*Tab B*

# Utah Prosecution Council

## Net Cost of Conference

### Spring Conference

	Spring Conference (Conferences)	Total Conferences	TOTAL
<b>Income</b>			
CONFERENCE REGISTRATION FEES			
Spring Conference	19,590.00	19,590.00	19,590.00
<b>Total CONFERENCE REGISTRATION FEES</b>	<b>19,590.00</b>	<b>19,590.00</b>	<b>19,590.00</b>
<b>Total Income</b>	<b>19,590.00</b>	<b>19,590.00</b>	<b>19,590.00</b>
<b>Expense</b>			
Conferences			
Spring Conference			
audio-visual	2,480.00	2,480.00	2,480.00
catering	7,868.70	7,868.70	7,868.70
facilities charge	1,990.00	1,990.00	1,990.00
honoraria	1,000.00	1,000.00	1,000.00
lodging	1,962.00	1,962.00	1,962.00
MCLE fee	2,806.26	2,806.26	2,806.26
meals	185.00	185.00	185.00
mileage	848.47	848.47	848.47
miscellaneous	130.99	130.99	130.99
<b>Total Spring Conference</b>	<b>19,271.42</b>	<b>19,271.42</b>	<b>19,271.42</b>
<b>Total Conferences</b>	<b>19,271.42</b>	<b>19,271.42</b>	<b>19,271.42</b>
<b>Total Expense</b>	<b>19,271.42</b>	<b>19,271.42</b>	<b>19,271.42</b>
<b>Net Income</b>	<b>318.58</b>	<b>318.58</b>	<b>318.58</b>

*Tab C*

***Tab D***

Utah Prosecution Council  
Comparison Report - Budget vs. Actual  
July 2016 through June 2017

9:59 AM

06/27/17

Cash Basis

	Jul '16 - Jun 17	Budget	\$ Over Budget	% of Budget
<b>Income</b>				
CONFERENCE REGISTRATION FEES				
Advanced Trial Skills Training	0.00	1,500.00	-1,500.00	0.0%
Basic Prosecutor	1,275.00	1,875.00	-600.00	68.0%
Civil Conference	3,675.00	3,750.00	-75.00	98.0%
Domestic Violence	0.00	0.00	0.00	0.0%
Fall Conference	6,975.00	7,125.00	-150.00	97.9%
Sexual Assault Conf	0.00	0.00	0.00	0.0%
Spring Conference	19,890.00	24,375.00	-4,485.00	81.6%
Train the Trainer	0.00	0.00	0.00	0.0%
UMPA	2,775.00	3,000.00	-225.00	92.5%
CONFERENCE REGISTRATION FEES - Other	75.00			
Total CONFERENCE REGISTRATION FEES	34,565.00	41,625.00	-6,560.00	83.3%
EXPENSE REIMBURSEMENTS				
HB200 Funds for Trauma - SADVRP (These funds from the passage of HB200, 2017, will pay for the trauma/SADVRP prosecut...	0.00	0.00	0.00	0.0%
John R Justice Grant	32,521.00	32,521.00	0.00	100.0%
Reimb from SWAP for Civil Conf	12,545.31	12,545.31	0.00	100.0%
Reimb from SWAP for Exec Conf	0.00	0.00	0.00	0.0%
Staff Atty DV & SVRP				
VAWA grant for DVPR	17,230.56	39,288.08	-22,057.52	43.9%
VAWA grant for SVRP	47,430.16	90,926.66	-43,496.50	52.2%
Staff Atty DV & SVRP - Other	0.00	0.00	0.00	0.0%
Total Staff Atty DV & SVRP	64,660.72	130,214.74	-65,554.02	49.7%
Staff Atty Traffic Safety				
DPS Traffic Safety Funds - TSRP	103,581.83	135,163.21	-31,581.38	76.6%
Total Staff Atty Traffic Safety	103,581.83	135,163.21	-31,581.38	76.6%
Total EXPENSE REIMBURSEMENTS	213,308.86	310,444.26	-97,135.40	68.7%
PIMS Income				
PIMS User Fees	28,840.00	10,000.00	18,840.00	288.4%
PIMS Income - Other	0.00	0.00	0.00	0.0%
Total PIMS Income	28,840.00	10,000.00	18,840.00	288.4%
SCHARGE & NON-LAPSING CARRYOVER				
Non-lapsing carry over	102,519.00	102,519.00	0.00	100.0%
Surcharge Receipts	464,259.66	578,891.00	-114,631.34	80.2%
Surcharge Receipts DV Training (Comes from the .5% received by the AG's office for the training of state and local pros	0.00	0.00	0.00	0.0%
Total SCHARGE & NON-LAPSING CARRYOVER	566,778.66	681,410.00	-114,631.34	83.2%
UNCATEGORIZED INCOME				
Total Income	843,592.52	1,043,479.26	-199,886.74	80.8%
Expense				
ADMINISTRATIVE FEES				
Administrative fee to AG	15,000.00	15,000.00	0.00	100.0%
Building OS&M	3,582.00	3,600.00	-18.00	99.5%
DB Proc (West Law)	1,502.04	1,600.00	-97.96	93.9%
Ins & Bonds	1,172.28	1,200.00	-27.72	97.7%
Total ADMINISTRATIVE FEES	21,256.32	21,400.00	-143.68	99.3%
Conferences				
Advanced Trial Skills Training				
air conditioning	0.00	0.00	0.00	0.0%
facilities charge	0.00	0.00	0.00	0.0%
lodging	0.00	0.00	0.00	0.0%
MCLE fee	0.00	0.00	0.00	0.0%
meals	0.00	0.00	0.00	0.0%
mileage	0.00	0.00	0.00	0.0%
Advanced Trial Skills Training - Other				
Total Advanced Trial Skills Training	0.00	6,000.00	-6,000.00	0.0%
Basic Prosecutor Course				
catering	2,899.80	0.00	2,899.80	100.0%
lodging	890.00			
lodging, students	3,536.35			
MCLE fee	7,974.00			
meals	376.00			
mileage	1,429.70			
printing	2,050.23	0.00	2,050.23	100.0%
Basic Prosecutor Course - Other				
Total Basic Prosecutor Course	236.68	18,500.00	-18,500.00	0.0%
Total	18,505.76	18,500.00	5.76	100.0%

# Utah Prosecution Council Comparison Report - Budget vs. Actual July 2016 through June 2017

	Jul '16 - Jun 17	Budget	\$ Over Budget	% of Budget
Civil Training Conference				
Air fare	325.20			
catering	4,030.00	0.00	4,030.00	100.0%
facilities charge	1,767.84			
lodging	5,292.03			
MCLE fee	716.00	0.00	716.00	100.0%
meals	829.00	0.00	3,095.99	100.0%
mileage	3,095.99			
miscellaneous	164.25			
Civil Training Conference - Other	0.00	16,000.00	-16,000.00	0.0%
Total Civil Training Conference	16,220.31	16,000.00	220.31	101.4%
Conference Materials				
Handouts, Materials, SWAG	129.76	2,000.00	-1,870.24	6.5%
Utah Travel Council Calendars	0.00	1,300.00	-1,300.00	0.0%
Total Conference Materials	129.76	3,300.00	-3,170.24	3.9%
Domestic Violence				
catering	0.00	0.00	0.00	0.0%
Domestic Violence - Other	0.00	0.00	0.00	0.0%
Total Domestic Violence	0.00	0.00	0.00	0.0%
Executive				
air fare	0.00	0.00	0.00	0.0%
lodging	729.86	0.00	729.86	100.0%
meals	0.00	0.00	0.00	0.0%
mileage	870.67	0.00	870.67	100.0%
miscellaneous	104.00	0.00	104.00	100.0%
Executive - Other	0.00	1,500.00	-1,500.00	0.0%
Total Executive	1,704.53	1,500.00	204.53	113.6%
Fall Conference				
air fare	235.20			
catering	5,836.81			
handouts	112.28			
honoraria	3,950.00			
lodging	4,951.21			
MCLE fee	1,328.00			
meals	885.26			
mileage	3,005.32			
printing	236.67			
UPC Brief Cases	0.00	0.00	0.00	0.0%
Fall Conference - Other	0.00	26,000.00	-26,000.00	0.0%
Total Fall Conference	20,540.76	26,000.00	-5,459.24	79.0%
Regional Training				
Legislative Update	0.00	0.00	0.00	0.0%
facilities charge	199.53	0.00	199.53	100.0%
lodging	41.00	0.00	41.00	100.0%
meals	230.31	0.00	230.31	100.0%
mileage	0.00	0.00	0.00	0.0%
printing	0.00	0.00	0.00	0.0%
Legislative Update - Other	470.84	0.00	470.84	100.0%
Total Legislative Update	0.00	0.00	0.00	0.0%
Regional Training - Other	0.00	2,500.00	-2,500.00	0.0%
Total Regional Training	470.84	2,500.00	-2,029.16	18.8%
Sexual Assault Conf				
catering	0.00	0.00	0.00	0.0%
facilities charge	0.00	0.00	0.00	0.0%
honoraria	0.00	0.00	0.00	0.0%
lodging	0.00	0.00	0.00	0.0%
MCLE fee	0.00	0.00	0.00	0.0%
meals	0.00	0.00	0.00	0.0%
mileage	0.00	0.00	0.00	0.0%
printing	0.00	0.00	0.00	0.0%
Total Sexual Assault Conf	0.00	0.00	0.00	0.0%

# Utah Prosecution Council Comparison Report - Budget vs. Actual July 2016 through June 2017

	Jul '16 - Jun 17	Budget	\$ Over Budget	% of Budget
Spring Conference				
audio-visual	2,480.00	0.00	2,480.00	100.0%
catering	7,868.70	0.00	7,868.70	100.0%
facilities charge	1,990.00	0.00	1,990.00	100.0%
honoraria	1,000.00	0.00	1,000.00	100.0%
lodging	1,962.00	0.00	1,962.00	100.0%
MCLE fee	2,806.26	0.00	2,806.26	100.0%
meals	233.00	0.00	233.00	100.0%
mileage	896.85	0.00	896.85	100.0%
miscellaneous	130.99	0.00	130.99	100.0%
printing	0.00	0.00	0.00	0.0%
Spring Conference - Other	0.00	26,000.00	-26,000.00	0.0%
Total Spring Conference	19,367.80	26,000.00	-6,632.20	74.5%
Staff Attorney Training				
SV/DVRP Training Materials	153.04	2,000.00	-1,846.96	7.7%
SV/DVRP workshops				
lodging	0.00	0.00	0.00	0.0%
meals	0.00	0.00	0.00	0.0%
mileage/car rental	0.00	0.00	0.00	0.0%
miscellaneous	0.00	0.00	0.00	0.0%
Total SV/DVRP workshops	0.00	0.00	0.00	0.0%
SVRP Training beg Jan 2012				
audio/visual	0.00	0.00	0.00	0.0%
Total SVRP Training beg Jan 2012	0.00	0.00	0.00	0.0%
TSRP Scholarships	1,050.00	0.00	1,050.00	100.0%
TSRP Training				
lodging	0.00	0.00	0.00	0.0%
meals	0.00	0.00	0.00	0.0%
mileage/car rental	0.00	0.00	0.00	0.0%
miscellaneous	177.57	0.00	177.57	100.0%
printing	0.00	0.00	0.00	0.0%
TSRP Training - Other	0.00	0.00	0.00	0.0%
Total TSRP Training	177.57	13,500.00	-13,322.43	1.3%
Staff Attorney Training - Other				
Train the Trainers	202.56	0.00	202.56	100.0%
UMPA Summer Conf	1,593.17	15,500.00	-13,916.83	10.2%
audio-visual	0.00	0.00	0.00	0.0%
catering	39.99	0.00	39.99	100.0%
lodging	2,214.90	0.00	2,214.90	100.0%
meals	2,220.75	0.00	2,220.75	100.0%
MCLE fee	528.00	0.00	528.00	100.0%
mileage	661.00	0.00	661.00	100.0%
miscellaneous	2,537.44	0.00	2,537.44	100.0%
printing	106.07	0.00	106.07	100.0%
TSRP Training - Other	236.68	0.00	236.68	100.0%
UMPA Summer Conf	0.00	6,500.00	-6,500.00	0.0%
Total UMPA Summer Conf	8,544.83	6,500.00	2,044.83	131.5%
UPAA	0.00	12,000.00	-12,000.00	0.0%
Total Conferences	87,067.76	133,800.00	-46,732.24	85.1%
COUNCIL AND COMMITTEE MEETINGS				
Council and other committees				
catering	1,745.69	0.00	1,745.69	100.0%
lodging	212.46	0.00	212.46	100.0%
meals	561.00	0.00	561.00	100.0%
mileage	3,732.00	0.00	3,732.00	100.0%
Council and other committees - Other	0.00	6,500.00	-6,500.00	0.0%
Total Council and other committees	6,251.15	6,500.00	-248.85	96.2%
Training Committee				
catering	524.19	0.00	524.19	100.0%
lodging	0.00	0.00	0.00	100.0%
meals	502.00	0.00	502.00	100.0%
mileage	2,212.49	0.00	2,212.49	100.0%
miscellaneous	200.00	0.00	200.00	100.0%
Training Committee - Other	0.00	8,300.00	-8,300.00	0.0%
Total Training Committee	3,438.68	8,300.00	-4,861.32	41.4%
Total COUNCIL AND COMMITTEE MEETINGS	9,689.83	14,800.00	-5,110.17	65.5%

# Utah Prosecution Council

## Comparison Report - Budget vs. Actual

### July 2016 through June 2017


	Jul '16 - Jun 17	Budget	\$ Over Budget	% of Budget
<b>CURRENT EXPENSES</b>				
Annual MCLE Fee	200.00	2,700.00	-2,500.00	7.4%
Donation to UT Journal Crim Law	0.00	0.00	0.00	0.0%
Donations UT Cncl Victims Crime	2,000.00	1,000.00	1,000.00	200.0%
Dues & Memberships	1,760.00	2,000.00	-240.00	88.0%
Equipment/Supplies-not Data Pro	1,567.38	0.00	1,567.38	100.0%
IT (Hardware and software requirements for UPC.)				
Hardware	0.00	3,000.00	-3,000.00	0.0%
Network Services	1,520.52	4,800.00	-3,279.48	31.7%
Software	2,211.63	2,000.00	211.63	110.6%
UPC Website	949.66	1,100.00	-150.34	86.3%
<b>Total IT (Hardware and software requirements for UPC.)</b>	<b>4,681.81</b>	<b>10,900.00</b>	<b>-6,218.19</b>	<b>43.0%</b>
LEOJ Training	0.00	2,000.00	-2,000.00	0.0%
Library & Subscriptions	2,461.00	3,400.00	-939.00	72.4%
Miscellaneous	3,066.08	3,000.00	66.08	102.9%
Miscellaneous Motor Pool	0.00	0.00	0.00	0.0%
Postage	351.72	700.00	-348.28	50.2%
Telephone	5,472.66	6,000.00	-527.34	91.2%
<b>Total CURRENT EXPENSES</b>	<b>21,580.85</b>	<b>31,700.00</b>	<b>-10,119.35</b>	<b>68.1%</b>
<b>DATA MANAGEMENT - PIMS PROGRAM</b>				
PIMS committees				
UPC Technology Committee				
Catering	0.00	0.00	0.00	0.0%
Mileage	0.00	0.00	0.00	0.0%
<b>Total UPC Technology Committee</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>
PIMS committees - Other				
<b>Total PIMS committees</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>
PIMS Programming & Testing				
Phase I				
Court integration (e-filing)	0.00	0.00	0.00	0.0%
Phase II - Other	0.00	0.00	0.00	0.0%
<b>Total Phase II</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>
Phase III				
PIMS modifications/improvements	0.00	0.00	0.00	0.0%
<b>Total PIMS Programming &amp; Testing</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.0%</b>
PIMS Support & Installation				
Maintenance / Installation				
Lodging	0.00	500.00	-500.00	0.0%
Meals	0.00	300.00	-300.00	0.0%
Mileage	40.97	250.00	-209.03	16.4%
<b>Total Maintenance / Installation</b>	<b>40.97</b>	<b>1,050.00</b>	<b>-1,009.03</b>	<b>3.9%</b>
Server hosting charges	1,908.37	2,210.00	-301.63	86.4%
Software	0.00	0.00	0.00	0.0%
<b>Total PIMS Support &amp; Installation</b>	<b>1,949.34</b>	<b>3,260.00</b>	<b>-1,310.66</b>	<b>58.8%</b>
<b>Total DATA MANAGEMENT - PIMS PROGRAM</b>	<b>1,949.34</b>	<b>3,260.00</b>	<b>-1,310.66</b>	<b>59.8%</b>
John R Justice Grant	17.19	32,521.00	-32,503.81	0.1%
<b>OUT-OF-STATE TRAVEL</b>				
NAJIS				
Board Meeting	1,262.45	1,600.00	-337.55	80.8%
Summer Conference	1,844.64	2,100.00	-255.36	87.8%
<b>Total NAJIS</b>	<b>3,137.09</b>	<b>3,700.00</b>	<b>-562.91</b>	<b>84.8%</b>
NAPC				
NAPC Leadership Meeting	0.00	2,500.00	-2,500.00	0.0%
NAPC Summer mtg	6,461.54	5,500.00	961.54	117.5%
NAPC Winter mtg	4,601.57	5,500.00	-898.43	83.7%
NAPC - Other	500.00			
<b>Total NAPC</b>	<b>11,563.11</b>	<b>13,500.00</b>	<b>-1,936.89</b>	<b>85.7%</b>
NDAAC CONFERENCE				
Other out of state travel	4,946.76	6,000.00	-1,053.24	82.4%
SVRP Out-of-State Travel	1,146.47	1,100.00	46.47	100.0%
TSRP Out-of-State Travel	0.00	1,100.00	-1,100.00	0.0%
<b>Total OUT-OF-STATE TRAVEL</b>	<b>6,093.23</b>	<b>8,200.00</b>	<b>-2,106.77</b>	<b>330.9%</b>
<b>Total OUT-OF-STATE TRAVEL</b>	<b>27,412.00</b>	<b>26,300.00</b>	<b>1,112.00</b>	<b>104.2%</b>

# Utah Prosecution Council Comparison Report - Budget vs. Actual July 2016 through June 2017

	Jul '16 - Jun 17	Budget	\$ Over Budget	% of Budget
<b>PERSONNEL SERVICES</b>				
Director				
base salary	99,106.05	106,662.40	-7,556.35	92.9%
benefits	53,420.78	57,333.48	-3,912.70	93.2%
<b>Total Director</b>	<b>152,526.83</b>	<b>163,995.88</b>	<b>-11,469.05</b>	<b>83.0%</b>
Incentive Award	0.00	3,000.00	-3,000.00	0.0%
IT Director				
base salary	74,824.68	78,249.60	-3,424.92	95.6%
benefits	39,613.99	42,107.15	-2,493.16	94.1%
<b>Total IT Director</b>	<b>114,438.67</b>	<b>120,356.75</b>	<b>-5,918.08</b>	<b>95.1%</b>
Law Clerk I				
base salary	9,737.32	14,872.00	-5,134.68	65.5%
benefits	725.83	1,256.68	-530.85	57.8%
<b>Total Law Clerk I</b>	<b>10,463.15</b>	<b>16,128.68</b>	<b>-5,665.53</b>	<b>64.9%</b>
Staff Attorney - DV & SVRP				
base salary	66,144.08	108,284.80	-42,140.72	61.1%
benefits	33,892.94	57,958.45	-24,065.51	56.5%
<b>Total Staff Attorney - DV &amp; SVRP</b>	<b>100,037.02</b>	<b>166,243.25</b>	<b>-66,206.23</b>	<b>60.2%</b>
Staff Attorney - Traffic Safety				
base salary	71,907.81	79,040.00	-7,132.19	91.0%
benefits	45,005.30	46,666.21	-1,660.91	96.4%
<b>Total Staff Attorney - Traffic Safety</b>	<b>116,913.11</b>	<b>125,706.21</b>	<b>-8,793.10</b>	<b>93.0%</b>
Training Coordinator				
base salary	65,039.86	69,992.00	-4,952.14	92.9%
benefits	39,908.23	43,211.83	-3,303.60	92.4%
<b>Total Training Coordinator</b>	<b>104,948.09</b>	<b>113,203.83</b>	<b>-8,255.74</b>	<b>92.7%</b>
<b>Total PERSONNEL SERVICES</b>	<b>599,326.87</b>	<b>708,664.60</b>	<b>-109,337.73</b>	<b>84.6%</b>
UNCATEGORIZED EXPENSES	83.47	0.00	83.47	100.0%
UNUSUAL PROSECUTION EXPENSES	0.00	0.00	0.00	0.0%
UPAA APPROPRIATION	12,000.00	12,000.00	0.00	100.0%
UPPAC	0.00	500.00	-500.00	0.0%
<b>Total Expense</b>	<b>780,363.43</b>	<b>884,945.60</b>	<b>-104,582.17</b>	<b>78.2%</b>
<b>Net Income</b>	<b>63,209.09</b>	<b>58,533.66</b>	<b>4,675.43</b>	<b>108.0%</b>

*Tab E*

# MEMO

From: Robert J. Church, Director, Utah Prosecution Council   
To: Council Members  
Date: June 27, 2017  
Re: FY18 Proposed Budget

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First, let me apologize for not getting this to you last week. I have been out training the last two weeks and wrongfully assumed that just because I could remote access our files on the state's network, I would be able to remote access our budget program (QuickBooks). I was not so could not work on the budget until yesterday.

Second, neither of the two budgets I am submitting are balanced so I hesitate to even give these to you. But, because I know you would want to see where we're at, I am providing the two budgets with the following explanations.

1. The AG's office has increased our rent and administrative costs from \$15,000 to \$35,700 per year. When this number was first given to me it was with the understanding that this number more accurately reflects our percentage of the cost to use the AG's administrative services staff. Steve Garside, Barry Huntington and I met with Spence Austin, Chief Criminal Deputy and Missy Larsen, Chief of Staff, AG's office. One of the items discussed was this increase. The AG's office agreed to provide us with a more detailed description of just what these costs cover.
2. I project the non-lapsing surcharge based on the past 5-years average.
3. I project the coming year's surcharge based the average of the last 5-years numbers.
4. I get a projected surcharge number from state finance. In the past, it has been pretty close to the number I get when averaging the last 5-years and so I've used the state's projected surcharge number.
5. Mark suggested I cut \$30,000 - \$50,000 off those numbers in anticipation of the surcharge going down. I've done that the last 3 years.
6. This year, my projection is \$20,000 higher than the states. Because of that large difference, I have created two different budgets. Both are attached. The 5-year average budget is highlighted in yellow. The state's projected numbers are highlighted in pink.
7. The 5-year budget is over budget by **\$7,277.06**
8. The state-projected budget is over by **\$27,277.06**. This is a more likely scenario.

9. Both budgets assume that SWAP will reimburse UPC \$13,500 for Civil Conference. If that does not happen or it is less than projected, we will be over budget by that amount.
10. I am meeting with the AG's finance director, Kimberley Schmelling, this afternoon to discuss the increased administrative costs. I am hoping she will help me discover where I've made any mistakes. (I'm hoping I've made enough to make up the difference.)
11. Here is what has been cut from both budgets:
  - a. All SWAG, including calendars, briefcases, etc.
  - b. All hardware upgrades.
  - c. No support to LEOJ.
  - d. Cut out regional legislative updates.
  - e. Only one UPC staff member will attend our NAPC summer conference.
  - f. No money for employee incentive awards.
12. Areas where further cuts could be made:
  - a. Cut out Advanced Trial Course.
    - i. Do not want to as we haven't offered one in two years.
    - ii. \$4,500 Savings (6,000 - 1,500)
  - b. Cut out Basic
    - i. Hold it every other year. Our brochure says Basic is for prosecutors with - 2 years experience. Every other year would still accommodate new prosecutors.
    - ii. If we cut Basic this year we may incur contract penalties but it would be less than paying for the conference.
      - (1) Marilyn thinks she can work with the University Inn but we should prepare for the worst just in case.
    - iii. \$17,225+/- Savings (18,500 - 1,275 - breach of contract?)
  - c. No longer donate funds to Utah Council on Victims of Crime.
    - i. \$2,000 savings
  - d. No longer hold conferences off the Wasatch Front.
    - i. Mileage and per diem are huge expenses.
    - ii. Use as many free locations as possible to not incur conference center fees.
      - (1) Substantial savings.
13. Additional Sources of Income
  - a. DV Training Surcharge
    - i. The AG's office told Steve Garside they were going to be doing more DV training as required by the statute.
    - ii. Spence and Missy want us to set a meeting with them, Greg, and Kimberley to discuss exactly what the AG's office will be doing in terms of training and how they're using the DV training surcharge.
    - iii. Perhaps UPC can still glean some funds from this source but I won't know that until later.

14. Increase Cost of Conferences
  - a. I know the Council does not want to do this but raising the fees by \$25 per group i.e. \$100 for prosecutors, law enforcement, staff, etc. and to \$325 for defense attorneys, non-government personnel.
    - i. Projected increase assuming we do not cut Advanced and Basic. Of course these numbers will vary by the actual number of people who attend.
      - (1) Advanced - \$500 increase
      - (2) Basic - \$425
      - (3) Civil - \$1,166
      - (4) Fall - \$2,000
      - (5) Spring - \$13,125 (based on 275 public employees, 25 defense counsel)
      - (6) UMPA - \$925
        - (a) Total projected increase: \$18,141
        - (b) However, this will still not balance the state projected budget.
15. DV Grant
  - a. With the funding from HB0200 I have not factored in any DV grant money. It is possible we could apply for another 1-year grant which would be approximately \$30,000+.
  - b. I will have "the new Donna" look into that.
16. Mistakes
  - a. I truly hope I've made mistakes and I'm just not seeing them.

Utah Prosecution Council  
5-yr Average Surcharge  
July 2017 through June 2018

	Jul '17 - Jun '18	Budget	\$ Over Budget	% of Budget
Income				
CONFERENCE REGISTRATION FEES				
Advanced Trial Skills Training	0.00	-1,500.00	-1,500.00	0.0%
Basic Prosecutor	0.00	-1,275.00	-1,275.00	0.0%
Civil Conference	0.00	3,500.00	-3,500.00	0.0%
Fall Conference	0.00	7,000.00	-7,000.00	0.0%
Spring Conference	0.00	22,500.00	-22,500.00	0.0%
UMPA	0.00	2,775.00	-2,775.00	0.0%
Total CONFERENCE REGISTRATION FEES	0.00	38,550.00	-38,550.00	0.0%
EXPENSE REIMBURSEMENTS				
HB200 Funds for Trauma - SADVRP (These funds from the passage of HB200, 2017, will pay for the traumaSADVRP p...	0.00	182,800.00	-182,800.00	0.0%
John R Justice Grant	0.00	35,263.00	-35,263.00	0.0%
Reimb from SWAP for Civil Conf	0.00	13,000.00	-13,000.00	0.0%
Staff Atty DV & SVRP	0.00	0.00	0.00	0.0%
DPS Traffic Safety Funds - TSRP	0.00	136,017.91	-136,017.91	0.0%
Total Staff Atty Traffic Safety	0.00	136,017.91	-136,017.91	0.0%
Total EXPENSE REIMBURSEMENTS	0.00	367,080.91	-367,080.91	0.0%
PIMS Income				
PIMS User Fees	0.00	20,000.00	-20,000.00	0.0%
Total PIMS Income	0.00	20,000.00	-20,000.00	0.0%
SCHARGE & NON-LAPSING CARRYOVER				
Non-lapsing carry over	0.00	53,537.00	-53,537.00	0.0%
Surcharge Receipts	0.00	526,495.00	-526,495.00	0.0%
Total SCHARGE & NON-LAPSING CARRYOVER	0.00	580,032.00	-580,032.00	0.0%
UNCATEGORIZED INCOME				
Total Income	0.00	1,005,662.91	-1,005,662.91	0.0%
Expense				
ADMINISTRATIVE FEES				
Administrative fee to AG	0.00	35,700.00	-35,700.00	0.0%
Building OS&M	0.00	3,600.00	-3,600.00	0.0%
DB Purc (West Law)	0.00	1,600.00	-1,600.00	0.0%
Ins & Bonds	0.00	1,200.00	-1,200.00	0.0%
Total ADMINISTRATIVE FEES	0.00	42,100.00	-42,100.00	0.0%
Conferences				
Advanced Trial Skills Training	0.00	6,000.00	-6,000.00	0.0%
Basic Prosecutor Course	0.00	18,500.00	-18,500.00	0.0%
Civil Training Conference	0.00	16,500.00	-16,500.00	0.0%
Conference Materials	0.00	0.00	0.00	0.0%
Handouts, Materials, SWAG	0.00	0.00	0.00	0.0%
Utah Travel Council Calendars	0.00	0.00	0.00	0.0%
Total Conference Materials	0.00	0.00	0.00	0.0%
Executive				
Fall Conference	0.00	2,000.00	-2,000.00	0.0%
UPC Brief Cases	0.00	0.00	0.00	0.0%
Fall Conference - Other	0.00	24,000.00	-24,000.00	0.0%
Total Fall Conference	0.00	24,000.00	-24,000.00	0.0%
Regional Training				
Legislative Update	0.00	0.00	0.00	0.0%
Total Regional Training	0.00	0.00	0.00	0.0%
Spring Conference	0.00	26,000.00	-26,000.00	0.0%
Staff Attorney Training	0.00	1,500.00	-1,500.00	0.0%
SV/DVRP Training Materials	0.00	1,050.00	-1,050.00	0.0%
TSRP Scholarships	0.00	13,500.00	-13,500.00	0.0%
TSRP Training	0.00	16,050.00	-16,050.00	0.0%
Total Staff Attorney Training	0.00	8,700.00	-8,700.00	0.0%
UMPA Summer Conf	0.00	12,000.00	-12,000.00	0.0%
UPPA	0.00	129,750.00	-129,750.00	0.0%
Total Conferences	0.00	6,500.00	-6,500.00	0.0%
COUNCIL AND COMMITTEE MEETINGS				
Council and other committees	0.00	4,000.00	-4,000.00	0.0%
Training Committee	0.00	10,500.00	-10,500.00	0.0%
Total COUNCIL AND COMMITTEE MEETINGS	0.00			0.0%

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06/27/17

Cash Basis

Utah Prosecution Council  
5-yr Average Surcharge  
July 2017 through June 2018

	Jul '17 - Jun '18	Budget	\$ Over Budget	% of Budget
<b>CURRENT EXPENSES</b>				
Annual MCLE Fee	0.00	220.00	-220.00	0.0%
Donations UT Crim Victims Crime	0.00	2,000.00	-2,000.00	0.0%
Dues & Memberships	0.00	2,000.00	-2,000.00	0.0%
Equipment/Supplies-not Data Pro	0.00	1,600.00	-1,600.00	0.0%
IT (Hardware and software requirements for UPC.)				
Hardware	0.00	1,500.00	-1,500.00	0.0%
Network Services	0.00	4,700.00	-4,700.00	0.0%
Software	0.00	1,710.00	-1,710.00	0.0%
UPC Website	0.00	1,140.00	-1,140.00	0.0%
Total IT (Hardware and software requirements for UPC.)	0.00	9,050.00	-9,050.00	0.0%
LEOU Training	0.00	0.00	0.00	0.0%
Library & Subscriptions	0.00	3,000.00	-3,000.00	0.0%
Miscellaneous	0.00	3,200.00	-3,200.00	0.0%
Postage	0.00	500.00	-500.00	0.0%
Telephone	0.00	6,000.00	-6,000.00	0.0%
Total CURRENT EXPENSES	0.00	27,570.00	-27,570.00	0.0%
<b>DATA MANAGEMENT - PIMS PROGRAM</b>				
PIMS Support & Installation				
Maintenance / Installation	0.00	300.00	-300.00	0.0%
Lodging	0.00	150.00	-150.00	0.0%
Meals	0.00	100.00	-100.00	0.0%
Mileage	0.00	550.00	-550.00	0.0%
Total Maintenance / Installation	0.00	550.00	-550.00	0.0%
Total PIMS Support & Installation	0.00	550.00	-550.00	0.0%
<b>Total DATA MANAGEMENT - PIMS PROGRAM</b>	0.00	550.00	-550.00	0.0%
John R. Justice Grant				
OUT-OF-STATE TRAVEL				
MAJIS	0.00	35,283.00	-35,283.00	0.0%
Board Meeting	0.00	1,500.00	-1,500.00	0.0%
Summer Conference	0.00	2,352.00	-2,352.00	0.0%
Total MAJIS	0.00	3,852.00	-3,852.00	0.0%
MAPC				
MAPC Summer mtg	0.00	3,500.00	-3,500.00	0.0%
MAPC Winter mtg	0.00	2,000.00	-2,000.00	0.0%
Total MAPC	0.00	5,500.00	-5,500.00	0.0%
NDAA CONFERENCE				
Other out of state travel	0.00	0.00	0.00	0.0%
SVRP Out-of-State Travel	0.00	1,200.00	-1,200.00	0.0%
TSRP Out-of-State Travel	0.00	6,600.00	-6,600.00	0.0%
Total OUT-OF-STATE TRAVEL	0.00	6,600.00	-6,600.00	0.0%
<b>PERSONNEL SERVICES</b>				
Director				
base salary	0.00	108,804.80	-108,804.80	0.0%
benefits	0.00	58,455.99	-58,455.99	0.0%
Total Director	0.00	168,260.79	-168,260.79	0.0%
Incentive Award				
IT Director	0.00	0.00	0.00	0.0%
base salary	0.00	79,809.60	-79,809.60	0.0%
benefits	0.00	43,444.11	-43,444.11	0.0%
Total IT Director	0.00	123,253.71	-123,253.71	0.0%
Law Clerk I				
base salary	0.00	30,347.20	-30,347.20	0.0%
benefits	0.00	2,564.34	-2,564.34	0.0%
Total Law Clerk I	0.00	32,911.54	-32,911.54	0.0%
Staff Attorney - DV & SVRP				
base salary	0.00	102,648.00	-102,648.00	0.0%
benefits	0.00	55,787.65	-55,787.65	0.0%
Total Staff Attorney - DV & SVRP	0.00	158,435.65	-158,435.65	0.0%
Staff Attorney - Traffic Safety				
base salary	0.00	80,620.80	-80,620.80	0.0%
benefits	0.00	46,267.99	-46,267.99	0.0%
Total Staff Attorney - Traffic Safety	0.00	128,908.79	-128,908.79	0.0%

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06/27/17

Cash Basis

Utah Prosecution Council  
5-yr Average Surcharge  
July 2017 through June 2018

Training Coordinator  
Base salary  
Benefits  
Total Training Coordinator  
Total PERSONNEL SERVICES  
UNCATEGORIZED EXPENSES  
UNUSUAL PROSECUTION EXPENSES  
UPPA APPROPRIATION  
UPPAC  
Total Expense  
Net Income

Jul '17 - Jun '18	Budget	\$ Over Budget	% of Budget
0.00	73,528.00	-73,528.00	0.0%
0.00	45,556.49	-45,556.49	0.0%
0.00	119,084.49	-119,084.49	0.0%
0.00	730,854.97	-730,854.97	0.0%
0.00	100.00	-100.00	0.0%
0.00	0.00	0.00	0.0%
0.00	12,000.00	-12,000.00	0.0%
0.00	500.00	-500.00	0.0%
0.00	1,012,939.97	-1,012,939.97	0.0%
0.00	-7,277.06	7,277.06	0.0%

Utah Prosecution Council  
Using State's Projected Surcharge Numbers  
July 2017 through June 2018

	Jul 17 - Jun 18	Budget	\$ Over Budget	% of Budget
Income				
CONFERENCE REGISTRATION FEES				
Advanced Trial Skills Training	0.00	1,500.00	-1,500.00	0.0%
Basic Prosecutor	0.00	1,275.00	-1,275.00	0.0%
Civil Conference	0.00	3,500.00	-3,500.00	0.0%
Fall Conference	0.00	7,000.00	-7,000.00	0.0%
Spring Conference	0.00	22,500.00	-22,500.00	0.0%
UMPA	0.00	2,775.00	-2,775.00	0.0%
Total CONFERENCE REGISTRATION FEES	0.00	38,550.00	-38,550.00	0.0%
EXPENSE REIMBURSEMENTS				
HB200 Funds for Trauma - SADV/RP (These funds from the passage of HB200, 2017, will pay for the traumaSADV/RP p...	0.00	182,800.00	-182,800.00	0.0%
John R Justice Grant	0.00	35,263.00	-35,263.00	0.0%
Reimb from SWAP for Civil Conf	0.00	13,000.00	-13,000.00	0.0%
Staff Atty DY & SYRP	0.00	0.00	0.00	0.0%
DPS Traffic Safety Funds - TSRP	0.00	136,017.91	-136,017.91	0.0%
Total Staff Atty Traffic Safety	0.00	136,017.91	-136,017.91	0.0%
Total EXPENSE REIMBURSEMENTS	0.00	367,080.91	-367,080.91	0.0%
PIMS Income				
PIMS User Fees	0.00	20,000.00	-20,000.00	0.0%
Total PIMS Income	0.00	20,000.00	-20,000.00	0.0%
CHARGE & NON-LAPSING CARRYOVER				
Non-lapsing carry over	0.00	53,537.00	-53,537.00	0.0%
Surcharge Receipts	0.00	506,495.00	-506,495.00	0.0%
Total CHARGE & NON-LAPSING CARRYOVER	0.00	560,032.00	-560,032.00	0.0%
UNCATEGORIZED INCOME				
Total Income	0.00	985,662.91	-985,662.91	0.0%
Expense				
ADMINISTRATIVE FEES				
Administrative fee to AG	0.00	35,700.00	-35,700.00	0.0%
Building OS&M	0.00	3,600.00	-3,600.00	0.0%
DB Purc (West Law)	0.00	1,600.00	-1,600.00	0.0%
Ins & Bonds	0.00	1,200.00	-1,200.00	0.0%
Total ADMINISTRATIVE FEES	0.00	42,100.00	-42,100.00	0.0%
Conferences				
Advanced Trial Skills Training	0.00	6,000.00	-6,000.00	0.0%
Basic Prosecutor Course	0.00	18,500.00	-18,500.00	0.0%
Civil Training Conference	0.00	16,500.00	-16,500.00	0.0%
Conference Materials	0.00	0.00	0.00	0.0%
Handouts, Materials, SWAG	0.00	0.00	0.00	0.0%
Utah Travel Council Calendars	0.00	0.00	0.00	0.0%
Total Conference Materials	0.00	2,000.00	-2,000.00	0.0%
Executive				
Fall Conference	0.00	0.00	0.00	0.0%
UPC Brief Cases	0.00	24,000.00	-24,000.00	0.0%
Fall Conference - Other	0.00	24,000.00	-24,000.00	0.0%
Total Fall Conference	0.00	0.00	0.00	0.0%
Regional Training				
Legislative Update	0.00	0.00	0.00	0.0%
Total Regional Training	0.00	26,000.00	-26,000.00	0.0%
Spring Conference	0.00	1,500.00	-1,500.00	0.0%
Staff Attorney Training	0.00	1,050.00	-1,050.00	0.0%
SV/DVRP Training Materials	0.00	13,500.00	-13,500.00	0.0%
TSRP Scholarships	0.00	16,050.00	-16,050.00	0.0%
TSRP Training	0.00	8,700.00	-8,700.00	0.0%
Total Staff Attorney Training	0.00	12,000.00	-12,000.00	0.0%
UMPA Summer Conf	0.00	129,750.00	-129,750.00	0.0%
UPAA	0.00	6,500.00	-6,500.00	0.0%
Total Conferences	0.00	4,000.00	-4,000.00	0.0%
COUNCIL AND COMMITTEE MEETINGS				
Council and other committees	0.00	10,500.00	-10,500.00	0.0%
Training Committee	0.00	0.00	0.00	0.0%
Total COUNCIL AND COMMITTEE MEETINGS	0.00	0.00	0.00	0.0%

Utah Prosecution Council  
Using State's Projected Surcharge Numbers  
July 2017 through June 2018

	Jul '17 - Jun '18	Budget	\$ Over Budget	% of Budget
<b>CURRENT EXPENSES</b>				
Annual MOLE Fee	0.00	220.00	-220.00	0.0%
Donations UT Crcl Victims Crime	0.00	2,000.00	-2,000.00	0.0%
Dues & Memberships	0.00	2,000.00	-2,000.00	0.0%
Equipment/Supplies-not Data Pro	0.00	1,600.00	-1,600.00	0.0%
IT Hardware and software requirements for UPC.)	0.00	1,500.00	-1,500.00	0.0%
Hardware	0.00	4,700.00	-4,700.00	0.0%
Network Services	0.00	1,710.00	-1,710.00	0.0%
Software	0.00	1,140.00	-1,140.00	0.0%
UPC Website	0.00	9,050.00	-9,050.00	0.0%
Total IT (Hardware and software requirements for UPC.)	0.00	0.00	0.00	0.0%
LEOU Training	0.00	0.00	0.00	0.0%
Library & Subscriptions	0.00	3,000.00	-3,000.00	0.0%
Miscellaneous	0.00	3,200.00	-3,200.00	0.0%
Postage	0.00	500.00	-500.00	0.0%
Telephone	0.00	6,000.00	-6,000.00	0.0%
Total CURRENT EXPENSES	0.00	27,570.00	-27,570.00	0.0%
<b>DATA MANAGEMENT - PIMS PROGRAM</b>				
PIMS Support & Installation	0.00	300.00	-300.00	0.0%
Maintenance / Installation	0.00	150.00	-150.00	0.0%
Lodging	0.00	100.00	-100.00	0.0%
Meals	0.00	550.00	-550.00	0.0%
mileage	0.00	550.00	-550.00	0.0%
Total Maintenance / Installation	0.00	550.00	-550.00	0.0%
Total PIMS Support & Installation	0.00	550.00	-550.00	0.0%
<b>Total DATA MANAGEMENT - PIMS PROGRAM</b>	0.00	550.00	-550.00	0.0%
John R Justice Grant	0.00	35,263.00	-35,263.00	0.0%
OUT-OF-STATE TRAVEL	0.00	1,500.00	-1,500.00	0.0%
NAJIS	0.00	2,352.00	-2,352.00	0.0%
Board Meeting	0.00	3,852.00	-3,852.00	0.0%
Summer Conference	0.00	3,500.00	-3,500.00	0.0%
Total NAJIS	0.00	2,000.00	-2,000.00	0.0%
NAPC	0.00	5,500.00	-5,500.00	0.0%
NAPC Summer mtg	0.00	0.00	0.00	0.0%
NAPC Winter mtg	0.00	1,200.00	-1,200.00	0.0%
Total NAPC	0.00	6,600.00	-6,600.00	0.0%
NDAIA CONFERENCE	0.00	6,600.00	-6,600.00	0.0%
Other out of state travel	0.00	6,600.00	-6,600.00	0.0%
SVRP Out-of-State Travel	0.00	23,752.00	-23,752.00	0.0%
TSRP Out-of-State Travel	0.00	108,804.80	-108,804.80	0.0%
Total OUT-OF-STATE TRAVEL	0.00	59,455.99	-59,455.99	0.0%
<b>PERSONNEL SERVICES</b>				
Director	0.00	168,260.79	-168,260.79	0.0%
base salary	0.00	0.00	0.00	0.0%
benefits	0.00	79,809.60	-79,809.60	0.0%
Total Director	0.00	43,444.11	-43,444.11	0.0%
Incentive Award	0.00	123,253.71	-123,253.71	0.0%
IT Director	0.00	30,347.20	-30,347.20	0.0%
base salary	0.00	2,564.34	-2,564.34	0.0%
benefits	0.00	32,911.54	-32,911.54	0.0%
Total IT Director	0.00	102,648.00	-102,648.00	0.0%
Law Clerk I	0.00	55,787.65	-55,787.65	0.0%
base salary	0.00	158,435.65	-158,435.65	0.0%
benefits	0.00	80,620.80	-80,620.80	0.0%
Total Staff Attorney - DV & SVRP	0.00	48,287.99	-48,287.99	0.0%
Staff Attorney - Traffic Safety	0.00	128,908.79	-128,908.79	0.0%
base salary	0.00			
benefits	0.00			
Total Staff Attorney - Traffic Safety	0.00			

Utah Prosecution Council  
Using State's Projected Surcharge Numbers  
July 2017 through June 2018

	Jul '17 - Jun '18	Budget	\$ Over Budget	% of Budget
Training Coordinator				
Base Salary	0.00	73,528.00	-73,528.00	0.0%
Benefits	0.00	45,556.49	-45,556.49	0.0%
Total Training Coordinator	0.00	119,084.49	-119,084.49	0.0%
Total PERSONNEL SERVICES	0.00	730,854.97	-730,854.97	0.0%
UNCATEGORIZED EXPENSES	0.00	100.00	-100.00	0.0%
UNUSUAL PROSECUTION EXPENSES	0.00	0.00	0.00	0.0%
UPRA APPROPRIATION	0.00	12,000.00	-12,000.00	0.0%
UPPAC	0.00	500.00	-500.00	0.0%
Total Expense	0.00	1,012,939.97	-1,012,939.97	0.0%
Net Income	0.00	-27,277.06	27,277.06	0.0%

*Tab F*

# ***2017 TRAINING SCHEDULE***

## **UTAH PROSECUTION COUNCIL**

April 27-28	SPRING CONFERENCE <i>Legislative and case law updates, civility/professionalism and more</i>	Riverwoods Conference Center Logan, UT
April & May	REGIONAL LEGISLATIVE UPDATES	23 Locations around the state
May 15-17	CJC/DV CONFERENCE <i>For anyone who has a role in DV or Child Abuse Cases</i>	Cliff Lodge Snowbird Resort
June 21-23	UTAH PROSECUTORIAL ASSISTANTS ASSN. ANNUAL CONFERENCE <i>Training for para-legals and secretarial staff in prosecutor offices</i>	Uintah Conference Ctr. Vernal SpringHill Stes.
August 3-4	UTAH MISDEMEANOR PROSECUTORS ASSN. SUMMER CONFERENCE <i>Training for city prosecutors and others who carry a misdemeanor case load</i>	Courtyard by Marriott St. George
August 14-18	BASIC PROSECUTOR COURSE <i>Trial advocacy and substantive legal instruction for new prosecutors</i>	University Inn Logan, UT
October 4-6	FALL PROSECUTORS TRAINING CONFERENCE <i>The annual CLE and idea sharing event for all Utah prosecutors</i>	Hilton Garden Inn St. George
October 18-20	GOVERNMENT CIVIL PRACTICE CONFERENCE <i>Training designed specifically for government civil attorneys from counties and cities</i>	Hilton Garden Inn St. George, UT
November 16-17	COUNTY/DISTRICT ATTORNEYS' EXECUTIVE SEMINAR <i>An opportunity for all county/district attorneys to discuss common issues</i>	Dixie Center St. George, UT

***Tab G***

## April-June 2017 TSRP Report

### Trainings Attended/Conducted:

- April 27-28, 2017 – UPC Spring Conference, Logan,
- May 3-5, 2017 – National TSRP Conference, Indianapolis, IN
  - Gathering of TSRPs from around the country to collaborate and be trained on relevant impaired driving issues
- May 11, 2017 – Winning the DLD Hearing, Farmington, UT
  - Training provided for Farmington PD
  - **1 hour training, 14 law enforcement attendees**
- May 12, 2017 – Winning the DLD Hearing, Lehi, UT
  - Training provided for Lehi PD (1 of 2)
  - **1 hour training, 10 law enforcement attendees**
- May 16, 2017 – Winning the DLD Hearing, Ogden, UT
  - Training provided for Weber County Sheriff (1 of 2)
  - **1 hour training, 13 law enforcement attendees**
- May 18, 2017 – Regional Legislative Update, Nephi, UT
  - **2 hour training**
  - **10 law enforcement attendees**
- May 18, 2017 – Regional Legislative Update, Provo, UT
  - **2 hour training**
  - **4 law enforcement, 1 attorney – 5 total attendees**
- May 19, 2017 – Winning the DLD Hearing, Lehi, UT
  - Training provided for Lehi PD (2 of 2)
  - **1 hour training, 14 law enforcement attendees**
- May 23, 2017 – Winning the DLD Hearing, Ogden, UT
  - **Training provided for Weber County Sheriff (2 of 2)**
  - **1 hour training, 14 law enforcement attendees**
- May 24, 2017 – Regional Legislative Update, Tooele, UT
  - **2 hour training**
  - **50 law enforcement, 1 attorney for 51 total attendees**
- May 24, 2017 – Regional Legislative Update, Farmington, UT
  - **2 hour training**
  - **11 law enforcement attendees**
- May 25, 2017 – Regional Legislative Update, Logan, UT
  - **2 hour training**
  - **2 law enforcement, 1 attorney, 1 court for 4 total attendees**
- May 25, 2017 – Regional Legislative Update, Brigham City, UT
  - **2 hour training**
  - **2 law enforcement attendees**
- May 31, 2017 – Regional Legislative Update, Hurricane, UT
  - **2 hour training**
  - **13 law enforcement and 3 attorneys for 16 total attendees**
- May 31, 2017 – Regional Legislative Update, Cedar City, UT
  - **2 hour training**

- **34 law enforcement and 1 attorney for 35 total attendees**
- June 5, 2017 – Multi-Agency Task Force, Ogden, UT
  - Presented abbreviated Legislative update
  - **1 hour – 17 attendees**
- June 6, 2017 – Multi-Agency Task Force, Orem, UT
  - Presented abbreviated Legislative update
  - **1 hour – 25 attendees**
- June 7, 2017 – Multi-Agency Task Force, Farmington, UT
  - Presented abbreviated Legislative update
  - **1 hour – 17 attendees**
- June 8, 2017 – Multi-Agency Task Force, Riverton, UT
  - Presented abbreviated Legislative update
  - **1 hour – 22 attendees**
- June 8, 2017 – Utah State DRE Conference, Sandy, UT
  - Full-day training for Utah DREs
  - Presented on utilizing DREs as experts at trial
  - **1 hour training – 90 total attendees**
- June 12, 2017 – Regional Legislative Update, Park City, UT
  - **2 hour training**
  - **26 law enforcement, 1 attorney – 27 total attendees**
- June 12, 2017 – Regional Legislative Update, Heber City, UT
  - **2 hour training**
  - **12 law enforcement attendees**
- June 14, 2017 – Police Department In-Service, South Jordan, UT
  - Presented Combatting DUI Defenses, Winning the DLD Hearing, and Marijuana: The New Frontier of Impaired Driving trainings
  - **4 hour training total**
  - **12 law enforcement attendees**
- June 19, 2017 – Winning the DLD Hearing, Hurricane, UT
  - **1 hour training**
  - **3 law enforcement attendees**
    - Washington County Sheriff training
- June 21, 2017 – Police Department In-Service, South Jordan, UT
  - Presented Combatting DUI Defenses, Winning the DLD Hearing, and Marijuana: The New Frontier of Impaired Driving trainings
  - **4 hour training total**
  - **22 law enforcement attendees**
- June 27, 2017 – Police Department In-Service, Grantsville, UT
  - Presented Combatting DUI Defenses, Winning the DLD Hearing, and Marijuana: The New Frontier of Impaired Driving trainings
  - **4 hour training total**

**Upcoming Trainings:**

- Police In-Service training for Grantsville PD
- Police In-Service training for Hurricane PD
- UMPA Conference – Training misdemeanor prosecutors
- Basic Prosecutor Conference

**Current Projects:**

- Updating Utah TSRP Training Curriculum
- Creating DUI-Drug specific curriculum for DREs and prosecutors

**Meetings Attended:**

- April 12, 2017 – Basic Prosecutor Conference planning meeting, Murray, UT
- April 13, 2017 – Drug Impaired Driving Symposium committee, SLC, UT
- April 18, 2017 – DUI Committee Meeting – Salt Lake City, UT
- April 25, 2017 – UHSO grantee site visit – Murray, UT
- April 26, 2017 – Utah Prosecution Council meeting, Salt Lake City, UT
- April 26, 2017 – Statewide Association of Prosecutors meeting, SLC, UT
- May 9, 2017 – Regional State DRE Coordinator Meeting, Sandy, UT
- May 15, 2017 – USAAV DUI Committee Meeting, Salt Lake City, UT
- May 16, 2017 – SWAPLAC Meeting, Salt Lake City, UT
- May 17, 2017 – Transportation Interim Committee hearing, Salt Lake City, UT
- May 22, 2017 – Drug Impaired Driving Symposium Committee, SLC, UT
- May 22, 2017 – MISLAC Meeting, Salt Lake City, UT
- June 2, 2017 – Legislative Wet Lab, Sandy, UT
- June 15, 2017 – Legislative Wet Lab, Sandy, UT
- June 28, 2017 – Statewide Association of Prosecutors Board, Heber City, UT
- June 28, 2017 – Utah Prosecution Council meeting, Heber City, UT

**Other Notables:**

- Completed numerous legislative summaries in preparation for UPC Spring Conference and subsequent legislative updates.
- Updated the state Master Offense Table to reflect all legislative changes to criminal provisions from this year's session.
- Participated in two legislative wet labs to help educate the Transportation Interim Committee on standardized field sobriety tests and detection of impaired drivers.

**Technical Assistance Provided:**

<b>MONTH</b>	<b>TECHNICAL ASSISTANCE</b>	<b>TRAINING PROVIDED</b>	<b>NUMBER OF PARTICIPANTS</b>	<b>CLASS HOURS</b>
<b>October 2016</b>	<b>46</b>	<b>4</b>	<b>70</b>	<b>4</b>
<b>November</b>	<b>31</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>December</b>	<b>23</b>	<b>2</b>	<b>27</b>	<b>3</b>
<b>January 2017</b>	<b>60</b>	<b>1</b>	<b>15</b>	<b>1</b>
<b>February</b>	<b>39</b>	<b>4</b>	<b>90</b>	<b>4</b>
<b>March</b>	<b>68</b>	<b>3</b>	<b>49</b>	<b>3</b>
<b>April</b>	<b>50</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>May</b>	<b>34</b>	<b>13</b>	<b>199</b>	<b>21</b>
<b>June*</b>	<b>58</b>	<b>11</b>	<b>246</b>	<b>22</b>
<b>July</b>				
<b>August</b>				
<b>September</b>				
<b>TOTALS*</b>	<b>409</b>	<b>38</b>	<b>696</b>	<b>58</b>

\*Totals only through June 22, 2017.

*Tab H*

## UTAH GOVERNMENT RECORDS REQUEST FORM

TO: Utah Prosecution Council, Utah Attorney General's Office (Name of government office holding the records and/or name of agency contact person.)

Address of government office: 161 East 300 South, 6<sup>th</sup> Floor, Salt Lake City, Utah  
84111

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Description of records sought (records must be described with reasonable specificity):

Email setting the following meeting:

On October 21, 2015, the Utah Prosecution Council ("UPC") held a meeting at 3:00 p.m. Two days earlier, early in the morning of October 19, 2015, the date, time and place of that meeting had not yet been determined. UPC Director Church was still "getting his ducks in a row" as he put it. By the afternoon of October 19, 2015, the date, time and place of that meeting was set.

This request is reasonably specific for the email or emails setting/confirming the date, time and place of the October 21, 2015, meeting, which would have been sent/received by Church some time after the early morning of October 19, 2015, and before close of business that same day.

- ☐ I would like to inspect (view) the records.
- ☒ I would like to receive a copy of the records. I understand that I may be responsible for fees associated with copying charges or research charges as permitted by UCA 63G-2-203. **I do not authorize costs. As this meeting was to discuss my employment status, I am obviously the subject of this record. Also, the emails arranging the October 21, 2015, meeting, were emails setting a public meeting as shown by the public minutes previously released pursuant to a GRAMA request.**
- ☐ UCA 63G-2-203 (4) encourages agencies to fulfill a records request without charge. Based on UCA 63G-2-203 (4), I am requesting a waiver of copy costs because:  
releasing the record primarily benefits the public rather than a person. Please explain:

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☒ I am the subject of the record. (Specifically, I was to be the subject of discussion in this meeting.) Also, the emails arranging the October 21, 2015, meeting, were emails setting a public meeting as shown by the public minutes previously released pursuant to a GRAMA request.

- ☐ I am the authorized representative of the subject of the record.
- ☐ My legal rights are directly affected by the record and I am impoverished.  
(Please attach information supporting your request for a waiver of the fees.)

If the requested records are not public, please explain why you believe you are entitled to access.

**X I am the subject of the record. Also, the emails arranging the October 21, 2015, meeting, were emails setting a public meeting as shown by the public minutes previously released pursuant to a GRAMA request.**

- ☐ I am the person who provided the information.
- ☐ I am authorized to have access by the subject of the record or by the person who submitted the information. Documentation required by UCA 63G-2-202, is attached.

☐☐☐ Other. Please explain:

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- ☐ I am requesting expedited response as permitted by UCA 63G-2-204 (3)(b). (Please attach information that shows your status as a member of the media and a statement that the records are required for a story for broadcast or publication; or other information that demonstrates that you are entitled to expedited response.)

Requester's Name: Edward A. Berkovich

Mailing Address: 950 West 400 North, Salt Lake City, UT 84116

Daytime telephone number: 801 441 9113 Date: June 5, 2017

Signature: /s/ Edward A. Berkovich  
Edward A. Berkovich

## Robert Church

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**From:** Lonny Pehrson  
**Sent:** Monday, June 19, 2017 4:47 PM  
**To:** edberkovich.utah@gmail.com  
**Subject:** Response to GRAMA Request #17-152 to Utah AG's Office  
**Attachments:** 17-152 Berkovich-Responsive record.pdf

Edward A. Berkovich  
950 West 400 North  
Salt Lake City, UT 84116

Dear Mr. Berkovich,

I am writing in response to your request for records of the Attorney General's Office (AG #17-152). Your request seeks any emails from October 19, 2015, setting/confirming the date, time or place of the October 21, 2015, meeting of the Utah Prosecution Council.

Please find attached a copy of the only record identified as responsive to your request, consisting of 1 page. No redactions have been made.

Please feel free to contact me if you have any questions.

Sincerely,

Lonny J. Pehrson  
Assistant Attorney General, State of Utah  
Government Records Counsel  
Tel: (801) 366-0312

### Right of Appeal

You have the right to appeal this determination to the Chief Administrative Officer of the Office, as provided in Utah Code Ann. Section 63G-2-401(1)(b). The notice of appeal would need to be sent to Attorney General Sean D. Reyes at the following address:

(If by hand-delivery)

GRAMA Appeal  
Office of the Attorney General  
Utah State Capitol Complex  
350 North State Street, Suite 230  
Salt Lake City, Utah 84114

(If by mail)

GRAMA Appeal  
Office of the Attorney General  
P.O. Box 140860  
Salt Lake City, Utah 84114-0860

(If by e-mail)

GRAMA Coordinator  
[grama\\_coordinator@utah.gov](mailto:grama_coordinator@utah.gov)

To do so, you must file a Notice of Appeal with that officer within 30 days after the date of this e-mail. Your Notice of Appeal must contain your name, your mailing address, your daytime telephone number, and a statement of the relief you seek. With your Notice of Appeal, you

may also file a short statement of facts, reasons, and legal authority in support of your appeal. Please note that Utah Code Ann. Section 63G-2-401(9) provides that the duties of the Chief Administrative Officer for handling such appeals may be delegated.

**PRIVACY NOTICE:** This transmission, from the Office of the Utah State Attorney General, contains information which may be confidential and/or legally privileged. The information is intended only for the use of the addressee. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this fax is strictly prohibited, and that the documents should be returned to this office immediately. The unauthorized disclosure, use or publication of confidential or privileged information inadvertently transmitted to you may result in criminal and/or civil liability.

## Robert Church

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**From:** Robert Church <rjchurch@utah.gov>  
**Sent:** Monday, October 19, 2015 1:35 PM  
**To:** Bittmenn, Paul; Christine Stevens; Farris, Jann; Foote, Stephen; Gill, Sim; Huntington, Barry; Keith Squires; Sean Reyes; Steve Garside; Sweat, Scott  
**Subject:** EMERGENCY Executive Council Session

Council Members,

An emergency executive session of the Council needs to convene this coming Wednesday, October 21, 2015 at 3:00 p.m. We will be meeting in the Tarbet Conference Room on the 6th floor of the Heber Well's building.

This meeting is being called to address the status of one of UPC's full-time employees.

For those who cannot physically attend but can attend electronically, please let me know. I will be making arrangements to conduct the meeting via a service similar to "Go-to-Meeting" or at the very least, by conference call. As soon as I have those details, I will notify everyone.

If you cannot participate in the meeting, please designate a proxy and let me know. I will be sending out a confidential information packet later today or tomorrow to the Council members and any proxies.

I apologize for the inconvenience this may cause but this issue needs to be addressed immediately.

Bob

*Robert J. Church*

Director, Utah Prosecution Council  
P.O. Box 140841  
Salt Lake City, UT 84114-0841  
O. 801-366-0201  
C. 801-921-3274



### CONFIDENTIALITY NOTICE

This email transmission from the Utah Prosecution Council contains information which may be confidential and/or legally privileged. The information is intended only for the use of the individual or entity named in this transmission. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this email is strictly prohibited, and that the email should be deleted immediately. If you have received this email in error, please notify us at [email@utah.gov](mailto:email@utah.gov). The unauthorized disclosure, use, or publication of confidential or privileged information inadvertently transmitted to you may result in criminal and/or civil liability.

# *Tab I*

## Robert Church

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**From:** Nova Dubovik <ndubovik@utah.gov>  
**Sent:** Friday, June 23, 2017 7:14 AM  
**To:** Edward Berkovich  
**Cc:** Paul Tonks; Patricia Smith-Mansfield; David Fleming; David Fleming; Robert Church; Lonny Pehrson; sgarside@laytoncity.org  
**Subject:** RE: Possible false affidavit in SRC closed case – Berkovich v. UPC/AGO, Appeal Req. # 2017-33 / AGO Case #17-024

Dear Mr. Berkovich:

This is a courtesy response to your email dated June 22, 2017, requesting a motion of reconsideration. Unfortunately, the only method to appeal a decision of the Records Committee is an appeal to District Court pursuant to Utah Code § 63G-2-404. There is no statutory or administrative provision allowing for a motion for reconsideration of a Committee's final decision.

However, your motion for reconsideration will be on record as it will be briefed to the Committee at the next regularly scheduled meeting on July 13, 2017. Additionally, a copy of the letter (Re: Possible false affidavit in SRC closed case...) you sent in response to the affidavit will be placed in your file.

As stated in the denial letter, dated April 11, 2017, if you disagreed with the Records Committee decision, you may have petitioned for judicial review of an order or decision and it should have been filed no later than 30 days after the date of the order or decision of the denial letter dated. (Utah Code § 63G-2-404).

Sincerely,

*Nova Dubovik*

**Nova Dubovik**  
Archivist II  
State Records Committee Executive Secretary  
Utah State Archives Records and Service  
346 South Rio Grande St.  
Salt Lake City, UT. 84101  
(801) 531-3834  
[ndubovik@utah.gov](mailto:ndubovik@utah.gov)

## Robert Church

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**From:** Edward Berkovich <edberkovich.utah@gmail.com>  
**Sent:** Thursday, June 22, 2017 12:43 PM  
**To:** ptonks@utah.gov; Paul Tonks; pmansfie@utah.gov; dflemingcrm@gmail.com; Robert Church  
**Cc:** Lonny Pehrson; Steve Garside  
**Subject:** Possible false affidavit in SRC closed case – Berkovich v. UPC/AGO, Appeal Req. # 2017-33 / AGO Case #17-024  
**Attachments:** State Records Committee False Affidavit Final Draft.pdf

Dear Ms. Smith-Mansfield and Messrs. Fleming and Tonks:

There is reasonable suspicion to believe that a false affidavit may have been provided to me by the Utah Attorney General's Office ("AGO") in response to my underlying GRAMA request that led to SRC Appeal Req. #2017-33.

That affidavit is now presumably part of the both SRC records and the archival history of the State of Utah.

Please see my attached letter regarding that.

Sincerely,

Edward A. Berkovich

EDWARD A. BERKOVICH  
950 WEST 400 NORTH  
SALT LAKE CITY UT 84116  
Mobile: 801 441 9113  
Email: edberkovich.utah@gmail.com

June 22, 2017

Patricia Smith-Mansfield  
Director and State Archivist  
Member, Utah State Records Committee  
346 S. Rio Grande St.  
Salt Lake City, Utah 84101-1106  
(By email to: pmansfie@utah.gov)

David M. Flemming  
Chair, Utah State Records Committee  
346 S. Rio Grande St.  
Salt Lake City, Utah 84101-1106  
(By email to: dflemingerm@gmail.com)

Paul H. Tonks  
Counsel to State Records Committee  
Utah Attorney General's Office  
5110 State Office Building  
PO Box 141160  
Salt Lake City, Utah  
(By email to: ptonks@utah.gov)

RE: Possible false affidavit in SRC closed case – Berkovich v. UPC/AGO, Appeal  
Req. #2017-33 / AGO Case #17-024

Dear Ms. Smith-Mansfield and Messrs. Fleming and Tonks:

There is reasonable suspicion to believe that a false affidavit may have been provided to me by the Utah Attorney General's Office ("AGO") in response to my underlying GRAMA request that led to SRC Appeal Req. #2017-33. That affidavit is now presumably part of the archival history of the State of Utah.

~~Why do I think there is reasonable suspicion to believe that AGO may have provided a false affidavit?~~

Simply put, a public body's own record states it went into closed-door session to discuss the two separate subjects of (1) employee incentives and (2) pending litigation. Then, to justify not having audio recorded the closed-door session, the public body provided an affidavit executed seven months later stating a new, previously-unmentioned reason for the closed-door session.

Yet AGO supplied just such an affidavit to me as part of a GRAMA response.

- (1) On or about May 17, 2016, I mailed a GRAMA request to AGO.
- (2) That GRAMA request was placed on the Utah Prosecution Council's ("UPC") agenda for the UPC June 24, 2016, meeting, and it was placed on the open and public part of the agenda. (Attachments, p. 2; attachment page numbers are indicated by a hand-printed numeral at the bottom right-hand corner of the page).
- (3) Also on the UPC agenda for June 24, 2016, was a "Closed Door Meeting" agenda item to discuss "Employee Incentive Awards Determination." That subject was the only item listed for the "Closed Door Meeting." (Attachments, p. 2).
- (4) Discussion of "Employee Incentive Awards Determination" is not a subject that is exempt from the audio recording requirement under Utah's Open and Public Meetings Act.
- (5) During the June 24, 2016, meeting, when the UPC reached my May 17, 2016, GRAMA request as an agenda item, UPC moved it to the "Closed Door Meeting," where "Employee Incentive Awards Determination" was to be discussed. (Attachments, p. 7).
- (6) According to UPC Director Robert Church ("Church"), the motion to move discussion of my May 17, 2016, GRAMA request into the "Closed Door Meeting" was because my GRAMA request was considered a "prelude to litigation." (Attachments, p. 8). Church's letter cites an audio recording made at the time of the June 24, 2016, meeting, does not mention "Employee Incentive Awards Determination" at all, but it does bring up the subject matter of the affidavit discussed in paragraph 11 below, then it attempts to conflate statutory distinct reasons for going into closed session.
- (7) A public body's discussion of "pending or reasonably imminent litigation" may properly be discussed in a "Closed Door Meeting," but those discussions are required to be audio recorded under Utah's Open and Public Meetings Act.
- (8) Thus, UPC should have audio recorded its "Closed Door Meeting" on June 24, 2016, when it discussed the two separate and distinct subjects of (1) "Employee Incentive Awards Determination" and (2) pending or reasonably imminent litigation.
- (9) About seven months after that meeting, I filed a separate GRAMA request on or about February 9, 2017, in which I requested a copy of the audio recording of UPC's "Closed Door Meeting"

on June 24, 2016. That request eventually became *Berkovich v. UPC/AGO*, Appeal Req. #2017-33 / AGO Case #17-024.

- (10) AGO records counsel sent me a letter stating there was no audio recording. (Attachments, pp. 9-10).
- (11) In support of the UPC/AGO position that there was no audio recording, UPC/AGO provided me with cover memo and affidavit, the latter *executed about seven months after* the June 24, 2016, UPC meeting. That affidavit changed the reason for going into closed session, stating that UPC's "sole purpose" of going into "closed door session" was to discuss the "character, professional competence, or physical or mental health of an individual," (Attachments, pp. 11-13), even though the UPC agenda states otherwise, and even though UPC Director Church has written otherwise. (Attachments, pp. 2, 8, respectively).
- (12) That affidavit was signed in Davis County, Utah, by Assistant Layton City Attorney Steve Garside, who also serves as UPC Chair. Attachments, p. 13. That affidavit does not state either of the reasons in the UPC's own documents for going into closed-door session, those reasons being to discuss "Employee Incentive Awards Determination" and "prelude to litigation."
- (13) When a public body goes into closed-door session for the "sole purpose" of "discuss[ing] the "character, professional competence, or physical or mental health of an individual," no audio recording is required. UPC/AGO utilized that affidavit in its response explaining the lack of an audio recording for the meeting. (Attachments, pp. 9-13).
- (14) It simply cannot be that the "sole purpose" of a closed-door session to discuss the two subjects of "Employee Incentive Awards Determination" and "pending or reasonably imminent litigation," is to discuss the third "sole purpose" of the "character," etc., of an individual. This is why I think there is reasonable suspicion to believe that a false affidavit may have been provided to me by AGO in a GRAMA response.
- (15) Ultimately, when I appealed to SRC, SRC found persuasive the UPC/AGO position that no SRC hearing should be held, and SRC did not grant me a hearing.

While the SRC case is closed, and the appeal period has run, there remains the issue that a highly questionable affidavit is now a part of the archival history of the State of Utah, and that may be concerning to Ms. Smith-Mansfield, as the Director and State Archivist.

There is also the issue that SRC, and SRC counsel Mr. Tonks, may have taken that affidavit at face value, and relied on it in part, when deciding not to grant me an SRC hearing. I provided that affidavit to SRC in my Response to Objection, and pointed out it lacked credibility. AGO records counsel, Lonny Pehrson, when arguing against granting me a hearing, may have been referring to it in part when referring to the "extensive documentation" provided to me showing there was no audio recording. Attachments, p. 15. SRC reliance on that affidavit may be concerning to Mr. Fleming, as Chair of SRC, and Mr. Tonks, as SRC counsel.

Also, more personally, in that affidavit, Mr. Garside impugns my “character, professional competence, or physical or mental health.” Since “GRAMA does not contemplate adversarial combat over record requests,” *Deseret News v. Salt Lake County*, 2008 UT 26, ¶ \_\_, it certainly should not contemplate utilization of affidavits which impugn a person’s characteristics, especially when there is no support in the public body’s records to support the impugning affidavit.

To my knowledge, neither Mr. Garside nor AGO records counsel Mr. Pehrson have disavowed, renounced, or in any other way distanced themselves from that affidavit. AGO appears to have stood by it, even though I raised a question about it in my appeal to the CAO designee (Mr. Parker Douglas) and even though I raised a question about it in my appeal to SRC.

These are extraordinary circumstances. Normally, AGO would **investigate** an affidavit which is unsupported by a public body’s own records, to confirm or dispel reasonable suspicion about it. In this case, AGO **utilized** it.

Worse, the UPC, as a public body, in its Director’s Summary of UPC Agenda Items for its April 26, 2017, meeting, makes it sound like the motion to go into closed-door session back on June 24, 2016, was to discuss the “character, professional competence, physical or mental health of an individual,” notwithstanding its Agenda and letter from UPC Director Church to the contrary. Attachments pp. 16, 2, 8, respectively (Attachments, p. 16, is here: <http://upc.utah.gov/meetingMinutes/04-26-2017-Agenda-DirectorSummary.pdf> (last accessed June 19, 2017)).

UPC records never even mention “character, professional competence, physical or mental health of an individual” as a basis to go into closed-door session until February 14, 2017, over seven months after the meeting, which is when UPC was trying to explain the absence of an audio recording.

**Request:** Under these extraordinary circumstances, I am respectfully requesting this matter to be brought to the attention of the SRC as a whole, perhaps in its business meeting, so that a vote may be taken to reopen this file, for the purpose of voting whether to place this letter and its attachments into the file. If SRC does that, at least the lack of a basis for the affidavit may be indicated in the file, and thus in the archival record, and the impugning of those characteristics about me in a publicly accessible record may at least be fairly brought into question.

Sincerely,

/s/ Edward A. Berkovich

Edward A. Berkovich

Cc: Lonny Pehrson (By email to [lpehrson@agutah.gov](mailto:lpehrson@agutah.gov))  
Steven Garside (By email to [sgarside@laytoncity.org](mailto:sgarside@laytoncity.org))

## ATTACHMENTS

- I. Welcome. Memories of Chad.
- II. Approval of the minutes from the April 13, 2016 meeting - Steve *Tab A*
- III. Report from Matt Lloyd, Council Representative on State Bar Criminal Law Section
- IV. UPC Conferences - Bob and Marilyn
  - A. Completed Conferences
  - B. 2016/17 Conference Schedule, *Tab B*
- V. Financial Report - Bob
  - A. Surcharge FY16 and Year to Date, *Tab C*
  - B. FY16/Budget Comparison Report, *Tab D*
  - C. Proposed FY17 Budget, *Tab E*
- VI. Training Committee Report - Steve
- VII. UPAA Report - Chris
- VIII. Resource Prosecutors Reports
  - A. Donna: *Tab F*
  - B. Tyson: *Tab G*
- IX. IT Issues: PIMS / Case Management / Webpage - Ron and Bob
  - A. Conference Registration Innovations
  - B. Case Management: RFP

- X. UPPAC - Bob
- XI. John R. Justice
- XII. Other Business
  - A. Berkovich GRAMA Request, *Tab H*
  - B. UPC's Statute
  - C. Sexual Assault Kit Initiative (SAKI) Prosecutor/Trainer, *Tab I*
- XIII. Closed Door Meeting - Employee Incentive Awards Determination, *Tab J*
- XIV. Next meeting: September 14, 2016
- XV. Adjourn

**UTAH PROSECUTION COUNCIL**

**Friday, June 24, 2016**

**Park City Marriott**

**1895 Sidewinder Drive**

**Park City, Utah**

**PENDING MINUTES**

UPC : Steven Garside, Chair, Layton City Attorney  
Barry Huntington, Chair-elect, Garfield County Attorney  
Paul Bittmenn, Cedar City Attorney  
Jann Farris, Morgan County Attorney  
Stephen Foote, Duchesne County Attorney  
Sim Gill, Salt Lake District Attorney  
Scott Sweat, Wasatch County Attorney  
Christine Stevens, UPAA Chair, Millard County Attorney's Office

EXCUSED: Sean Reyes, Utah Attorney General  
Commissioner Lance Davenport, Utah Department of Public Safety

UPC Bob Church, Director  
STAFF: Marilyn Jasperson, Training Coordinator  
Donna Kelly, Staff Attorney  
Tyson Skeen, Staff Attorney  
Ronald Weight, IT Director

GUESTS: Brock Belnap, Washington County Attorney  
Jeff Buhman, Utah County Attorney  
Wade Faraway, Assistant Attorney General  
Greg Ferbrache, Justice Division Director, Utah Attorney General  
Darcy Goddard, Deputy Salt Lake County District Attorney  
Will Carlson, Deputy Salt Lake County District Attorney  
Jason Sant, Spanish Fork City Attorney  
Robert Van Dyke, Kane County Attorney

**I. WELCOME. MEMORIES OF CHAD**

- A. The Council members were welcomed and the meeting convened.
- B. Fond memories were expressed in behalf of Chad Platt who passed away recently.

**II. APPROVAL OF THE JANUARY 8, 2016 MEETING MINUTES**

- A. Jann Farris moved to approve the minutes from April 13, 2016, seconded by Paul Bittmenn. The motion passed unanimously.

### III. REPORT FROM MATT LLOYD, COUNCIL REPRESENTATIVE ON STATE BAR CRIMINAL LAW SECTION

Bob Church gave the following report as Matt was excused. Bob reported that Matt and Tegan Troutner, AAG presented an ethics training at the Bar on "Social Media Pitfalls." The CLE was presented by the Criminal Law Section. Clayton Sims co-presented and gave the criminal defense perspective. After the training elections were held. Joel Kittrell was voted in as the Chair, and John Gunderson, Defense Attorney, as Vice Chair. Also, Mike Bohem, SLDA's Office was made a member of the committee. There was a new member of the committee assigned to work on CLE. Colleen McGee, past Chair, expressed thanks to UPC for Matt's appointment. Bob indicated that he was not aware that UPC should track this appointment, but will watch it more closely in the future. Bob encouraged anyone who would like to submit scholarly articles to the Utah Journal of Criminal Law are welcome to do so.

### IV. UPC CONFERENCES

#### A. Completed Conferences

Bob Church gave an in depth report on the following completed conferences. Please refer to the Director's Summary for details.

1. Regional Legislative Updates
  - a. Was well received. Over 300 officers attended.
  - b. Greg Ferbrache and others from the AG's Justice Division was a new addition to the training. They discussed the various task forces in the AG's office and other services they can provide. They mentioned the VIRTRA trainer. We plan to have them come every year.
2. CJC/DV Conference
  - a. Held May 16-18, 2016
  - b. Great attendance from prosecutors. Great reviews asking for the same prosecutor track next year.
  - c. Keynote speakers were almost all suggested by Donna/UPC.
3. UPAA Conference
  - a. June 22-24, 2016, Park City Marriott
  - b. This conference concluded just an hour before the Council meeting. Please refer to VII below for the full UPAA report.

#### B. 2016 Conference Schedule

In addition to the UPC 2016 Training Schedule the following was mentioned:

1. UMPA Summer Conference - August 4-5, 2016, Ruby's Inn. The focus will be on drug related driving and will be discussing the effects of legalized marijuana and traffic related offenses. There will be some UMPA business matters addressed (i.e., new UMPA By-Laws, election of President, President Elect and Executive Representative and more involvement in MIS-LAC.)
2. Basic Prosecutor Course - August 15-19, 2016, University Inn, Logan, Utah  
Draft agenda has been set. AnnMarie Howard has been invited to be part of the full time faculty. She replaces Matt Bates. AnnMarie is a recent graduate of Train the Trainer. There will also be other graduates from Train the Train to start teaching at the course.
3. Fall Prosecutor Training Course - October 5-7, 2016, Uintah Conference Center, Logan, Utah featuring Creighton Horton! The title or theme of the conference is mental issues, "Magical Mystery Tour: What Happens When Your Case Involves Mental Health Issues."  
Draft agenda has been set.
4. Government Civil Practice Conference - October 19-21, 2016, St. George Hilton Garden Inn.

- Draft agenda has been set.
- 5 County/District Attorney's Executive Seminar - November 10-11, 2016,  
Dixie Center, St. George, Utah

**V. FINANCIAL REPORT**

Bob Church made the following financial report. Additional information is included in the Director's Summary.

**A. Surcharge Report:**

The surcharge report includes receipts through to May 2016. Below are the monthly totals since the last meeting.

- |    |                     |                     |
|----|---------------------|---------------------|
| 1. | Mar 16: \$53,799.07 | Mar 15: \$52,186.65 |
| 2. | Apr 16: \$48,853.94 | Apr 15: \$57,988.06 |
| 3. | May 16: \$55,338.18 | May 15: \$49,032.16 |

**B. FY16 Budget/Comparison Report:**

1. Final grant reimbursement numbers for Donna's and Tyson's salaries and grants will be available until July.
2. Conference registration and PIMS fees continue to come in.

**C. Proposed FY17 Budget**

1. Reimbursement from SWAP
  - a. Several years ago SWAP had agreed to reimburse UPC for the costs of Civil Conference. Paul Boyden approached Bob and proposed reimbursing UPC \$42,437.40 for the last five years conferences. UPC has not sought or asked for reimbursed since taking over the coordination of this conference. After a lengthy discussion, it was decided to table this item and forward it to SWAP for their full consideration and response.
3. Non-lapsing Carryover - \$50,000
  - a. This is only a projection based on the past four years.
4. PIMS Income
  - a. The following is how Bob determined the amount:
    - (1) He subtracted those agencies who have already gone to a third party vendor from the list of PIMS users. That would mean UPC would receive approximately \$20,000 in PIMS income.
    - (2) Bob planned for UPC having its own case management system sometime in the next fiscal year.
    - (3) Not everyone will come on board during the next fiscal year, simply due to the amount of time it takes to install the software and work out the bugs.
    - (4) Therefore, Bob projected that our PIMS income would be reduced by half next year and accounted for PIMS income of \$10,000.00.
5. \$105,190.00 carry over.
  - a. Bob didn't show this as income on the first comparison report sent out last week. With this additional income UPC is in a good position financially.

Stephen Foote made the motion to approve the proposed FY17 Budget. Barry Huntington seconded. The motion carried unanimously.

## **VI. TRAINING COMMITTEE REPORT**

Steve Garside, UPC Training Committee Chair gave the following report. The committee's next meeting will be October 17-18, 2016. They meet bi-annually, typically, in March and October.

- A. New Presenters
  - 1. Steve reported that with Laura Dupaix retiring and Matt Bates taking the bench there is the need to find new presenters. The following individuals were suggested as possible presenters for Spring Conference.
    - a. Ryan Tenney, formerly from the AG's office, now at the U.S. Attorney's office, Blair Wardle with the Box Elder County Attorney's office and Peter Leavitt with SLDA's office.
    - b. John Nielsen, AG's office, has agreed to present the Supreme Court case update at Fall Conference.
  - 6. Will Carlson was introduced. He will be Chad Platt's replacement for the legislative update. Welcome Will.

## **VII. UPAA**

Christine Stevens gave the following UPAA report.

- A. The UPAA conference concluded just an hour before the council meeting.
- B. It was a banner year with 101 in attendance. By all accounts, it was very well received.
- C. Twelve individuals took the CUPA exam. Results on how many passed the exam will be reported at the next Council meeting. The question was asked if the test could be viewed by the bosses. In order to keep the integrity, confidentiality of the test and the scores private of those who take the test, the Board has made it a practice not to release the test or test results. However, to give the bosses a sample of what is on the test a compressed exam will be made available at the County Executive meeting in November. County attorneys will have the opportunity to test their knowledge on criminal and civil questions.
- D. There are two board positions available. Chris will report on those replacements at the next meeting.

## **VIII. RESOURCE PROSECUTORS REPORTS**

- A. Donna Kelly referred the Council to the in depth SA/DVRP report as outlined in the handouts.
- B. Tyson Skeen referred the Council to the in depth TSRP report as outlined in the handouts.

## **IX. IT ISSUES: PIMS/CASE MANAGEMENT/WEB PAGE**

In addition to the in depth report in the Director's Summary, Ronald Weight and Bob Church gave the following PIMS report.

- A. Bar code scanners for conference registration.
  - 1. Ron has developed a way to create bar codes for individual attendees to scan when they attend a conference. UPAA was the first conference to try out the new feature.
- B. Case Management
  - 1. Received a 12-month extension through August 31, 2017.
  - 2. RFP Process
    - a. Met with State Purchasing and got their feedback on the RFP. Bob started making the changes but was interrupted with the legislative updates.

- b. It is hoped to have the changes made, submitted and back from Purchasing by the end of July, early August.
- c. Will issue the RFP after that.

C. **PIMS**

- 1. Bob anticipates at least one more year of PIMS billing. Once a contract is entered into for a CMS it will take time to get it installed across the state.

X. **UPPAC**

Nothing new to report. Bob invited questions. Hearing none, he moved to the next item.

XI. **JOHN R. JUSTICE GRANT**

Bob Church made the following report.

- A. The application process closed for this year's grant. DOJ's matching requirement does not go into effect until after next year's grant. This means two more years of JRJ.

XII. **OTHER BUSINESS**

A. **Berkovich GRAMA Request**

This item was moved to the Closed Door Meeting under IX.

B. **UPC's Statute**

Bob Church gave an in depth report on this item. Please refer to the Director's Summary for details. Bob will, however, update the Council at the next meeting on the out come of the survey. He will know more if it will be economically possible for UPC to become its own entity, relocate and whether to change the language in the statute from public attorneys to prosecutors.

C. **Sexual Assault Kit Initiative (SAKI) Training Prosecutor**

Bob Church gave an in depth report on this item. Please refer to the Director's Summary for details. In summary, CCJJ received a grant for a 3/4 time person. This person would develop a victim center approach in investigating, prosecuting and notifying victims of cold case sexual assault cases within Salt Lake County. On June 6<sup>th</sup>, Bob, Greg Ferbrache, Ned Searle and April Ensign met to discuss the position and the apparent challenges. Greg Ferbrache suggested that it might be a better fit if this person was housed with Heidi Nestel at the Utah Crime Victims Legal Clinic. April and Ned were assigned to approach Heidi. Bob will report the findings at the next meeting.

IX. **CLOSED DOOR MEETING**

Barry Huntington made the motion to go into an Executive Session. Scott Sweat seconded the motion and the motion passed unanimously. The Council went into closed door session.

X. **NEXT MEETING**

In conjunction with the Fall Prosecutor's Training Conference.

Wednesday, October 5, 2016

8:30 a.m.

SpringHill Suites by Marriott

1205 West Highway 40

Vernal, Utah

XI. **ADJOURN**

# UPC | UTAH PROSECUTION COUNCIL

ROBERT J. CHURCH, DIRECTOR

COUNCIL MEMBERS  
STEVEN L. GARSIDE, CHAIR  
PAUL A. BITTMENN  
JANN L. FARRIS  
STEPHEN D. FOOTE  
SIMS, GILL  
BARRY L. HUNTINGTON  
SEAN D. REYES  
KEITH D. SQUIRES  
SCOTT H. SWEAT  
CHRISTINE STEVENS

March 7, 2017

Parker Douglas  
Chief Federal Deputy and General Counsel  
Office of the Utah Attorney General  
350 North State Street, Suite 230  
Salt Lake City, UT 84114-2320

*Re: Berkovich Appeal, GRAMA Request 17-024*

Dear Chief Douglas,

I have been asked to respond to Mr. Berkovich's appeal of the above referenced GRAMA request wherein he requests further explanation for the lack of any audio recording from the Council's June 24, 2016 meeting.

I placed the topic of Mr. Berkovich's GRAMA request on the June 24, 2016 Council agenda and addressed it in my Director's Summary, anticipating I would simply relay the status of the GRAMA request to the Council. When the topic was raised, Councilman Barry Huntington moved to go into executive session as he believed the GRAMA request was a prelude to litigation. [www.upc.utah.gov/council-meetings.php](http://www.upc.utah.gov/council-meetings.php), Council Meeting Audio and Minutes, Friday, 24 June 2016, Audio Links, Track 3 at 25:38, U.C.A. 52-4-205(1)(c). That motion was seconded by Councilman Scott Sweat.

Once in executive, or closed-door, session the discussion focused on the "character, professional competence, or physical or mental health of an individual." (Emphasis added.) U.C.A. 52-4-205 (1)(a) and no recording took place. The discussion contemplated by U.C.A. 52-4-205(1)(a) makes no reference to whether the person subject to the discussion is an employee or former employee. It simply says "individual." Mr. Berkovich cites to *Cf. Ward v. Richfield City*, 776 P.2d 93 (Utah Ct. App. 1989) for the proposition that a public body may not go into closed-session to discuss a non-employee. His interpretation is incorrect. The court said "Where at least two-thirds of the public body present at an open meeting vote to hold a closed meeting to discuss the character, professional competence, or physical or mental health of an individual, then a closed meeting may be held." *Id.* The court did not interpret "individual" to mean current, or even former, employee.

If there is additional information you or anyone else needs, please let me know.

Respectfully,



Robert J. Church  
Director

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES  
ATTORNEY GENERAL

Spencer E. Austin  
Chief Criminal Deputy

Parker Douglas  
Federal Solicitor & General Counsel

Tyler R. Green  
Solicitor General

Bridget K. Romano  
Chief Civil Deputy

February 24, 2017

*Sent via Email and U.S. Mail*

Edward A. Berkovich  
215 Quince St. Apt. 8  
Salt Lake City, UT 84103  
Email: edberkovich.utah@gmail.com

Re: Response to records request #17-024 to the Utah Attorney General's Office.

Dear Mr. Berkovich,

The Attorney General's Office has completed processing your records request received February 9, 2017, requesting any audio recording of the June 24, 2016, meeting of the Utah Prosecution Council.

Please find enclosed a Memo from UPC Director Robert J. Church explaining the lack of any audio recording of that meeting and the supporting Affidavit of Steven L. Garside, UPC Chair. This completes the Office's response to your request.

The Office has waived any fees for this request pursuant to Utah Code Ann. § 63G-2-203(4).

Sincerely,

A handwritten signature in cursive script that reads "Lonny Pehrson".

Lonny J. Pehrson  
Assistant Attorney General  
Government Records Counsel

Encl.

9

### Right of Appeal

You have the right to appeal this response to the chief administrative officer of the Attorney General's Office, as provided in Utah Code Ann. § 63G-2-401(1)(a). To do so, you must submit a Notice of Appeal within 30 days to Attorney General Sean D. Reyes at the following address:


(If by hand delivery)  
GRAMA Appeal  
Office of the Attorney General  
Utah State Capitol Complex  
350 North State Street Suite 230  
Salt Lake City, UT 84114

(If by mail)  
GRAMA Appeal  
Office of the Attorney General  
PO Box 140860  
Salt Lake City, UT 84114 0860

(If by email)  
GRAMA Coordinator  
grama\_coordinator@utah.gov

Your Notice of Appeal must contain your name, mailing address, daytime telephone number, and a statement of the relief you seek. You may also file a short statement of facts, reasons and legal authority in support of your appeal. Please note that Utah Code Ann. Section 63G-2-401(9) provides that the duties of the chief administrative officer for handling such appeals may be delegated.

## MEMO

From: Robert J. Church, Director, Utah Prosecution Council   
To: Lonny Pehrson, Assistant Attorney General, State of Utah, Government Records  
Counsel  
Date: February 14, 2017  
Re: Berkovich GRAMA Request

---

There is no audio recording of the closed-door session of the June 24, 2016 meeting referenced in this GRAMA request. While U.C.A. 52-4-206 generally requires closed-door meetings to be recorded, paragraph (6) provides conditions for which a closed-door meeting may not be recorded.

Per the requirements of paragraph (6) Attachment 1 is a sworn statement from the presiding Council member stating why the meeting was not recorded.


## **Attachment 1**

STATE OF UTAH                    )  
  : ss.  
COUNTY OF DAVIS                )

Comes now the affiant, Steven L Garside, Chair of the Utah Prosecution Council, being first duly sworn on oath and says:

1. I am the Chair of the Utah Prosecution Council;
2. On Friday, June 24, 2016 at a regularly scheduled Utah Prosecution Council Meeting, the Council moved to go into closed door session to discuss the character, professional competence, or physical or mental health of an individual, which encompassed a GRAMA request filed by Mr. Edward Berkovich on May 17, 2016; and
3. The sole purpose of the closed door session was to discuss the character, professional competence, or physical or mental health of an individual.

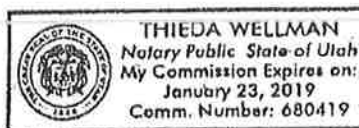
DATED this <sup>14</sup>10th day of February, 2017.

  
\_\_\_\_\_  
Steven L Garside  
Chair, Utah Prosecution Council  
Assistant Layton City Attorney

STATE OF UTAH                    )  
  : ss.  
COUNTY OF DAVIS                )

Subscribed and sworn to before me on this 14<sup>th</sup> day of February, 2017, by STEVEN L GARSIDE.

  
\_\_\_\_\_  
NOTARY PUBLIC



STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES  
ATTORNEY GENERAL

Spencer E. Austin  
Chief Criminal Deputy

Parker Douglas  
Federal Solicitor & General Counsel

Tyler R. Green  
Solicitor General

Bridget K. Romano  
Chief Civil Deputy

April 6, 2017

*Sent via email only*

Nova Dubovik  
Executive Secretary  
State Records Committee  
346 S. Rio Grande  
Salt Lake City, UT 84101-1106  
Phone: 801-531-3834  
E-mail: [ndubovik@utah.gov](mailto:ndubovik@utah.gov)

Re: Objection to appeal by Mr. Edward Berkovich to the State Records Committee regarding GRAMA Request #17-024 to the Utah Attorney General's Office.

Dear Ms. Dubovik,

I am writing in regard to the appeal submitted via email by Mr. Berkovich to the State Records Committee on April 6, 2017 (enclosed). The appeal is in regard to a records request submitted to the Utah Attorney General's Office (AGO) on February 9, 2017, seeking any audio recording of a June 24, 2016, meeting of the Utah Prosecution Council, which is administered by the AGO.

In response to Mr. Berkovich's request and appeal to the AGO's Chief Administrative Officer, the Office explained and documented that it has conducted a thorough search for the records requested, but that it does not maintain the records he seeks. This is clearly demonstrated by the documents included with Mr. Berkovich's appeal to the Committee.

Utah Administrative Code Rule R.35-2-2(2), provides that:

*In any appeal to the Committee of a governmental entity's denial of access to records for the reason that the record is not maintained by the governmental entity, the petitioner shall provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record was maintained by the governmental entity at one time, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record.*

Despite the Office's **documented explanation** regarding its thorough search for and lack of any responsive records, Mr. Berkovich's appeal does not include the statement of facts, reasons and legal authority required under Rule R.35-2-2(2) when appealing such a determination. **Accordingly, the AGO submits this objection to Mr. Berkovich's appeal and requests that the Committee require Mr. Berkovich to make the required showing before a hearing is scheduled in this matter.** The AGO further requests an opportunity to respond to any such statement of facts, reasons or legal authority submitted by Mr. Berkovich before the Committee decides to schedule a hearing on his appeal.

Given the **extensive documentation** already provided to Mr. Berkovich showing that the AGO does not maintain, and has never maintained, the records he seeks, the AGO believes that a hearing before the Committee on this appeal is not appropriate and would not serve the public interest.

Thank you for your consideration and I look forward to hearing from you soon.

Sincerely,



Lonny J. Pehrson  
Assistant Attorney General  
Government Records Counsel

Encl.

cc:  
Edward Berkovich (via email eberkovich@yahoo.com)

## Director's Summary of UPC Agenda Items

- I. Name Tents
  - A. To lend a more official air to our meetings, I'm asking that each Council Member sit in front of their name tent.
  - B. This will allow new members and visitors to know who the voting Council Members are.
- II. Approval of the Minutes.
  - A. See the enclosed pending minutes from the January 20, 2017 , meeting. *Tab A*
- III. Appearance by Ed Berkovich
  - A. At the Council's last meeting it was decided to give Mr. Berkovich the opportunity to appear before the Council to raise those issues he is concerned with.
  - B. Steve Garside contacted Mr. Berkovich and extended the invitation, notifying him of the date, time and location of the meeting.
- IV. Berkovich GRAMA Requests,
  - A. February 9, 2017. Records Request #17-024, Audio recording from closed-door Council session, June 24, 2016. All the documents in my possession related to this request are included in *Tab B*.
    1. Mr. Berkovich filed a GRAMA request for a copy of the closed-door session. I was forwarded a copy of the request from Lonny Pehrson, Government Records Counsel, AG's office.
    2. No recording was made due to the exception noted in UCA 52-4-206, when the purpose of the meeting is to discuss the character of an individual, not an employee. After the motion was made, the Council took a short break while those not staying for the closed door session left the room.
    3. As Council members reconvened the conversation focused on the character, professional competence, or physical or mental health of an individual and the recording was not turned on.
      - a. After reviewing statute, the recording should have been turned on, the purpose of the closed door session stated on the record, then the recorder should have been turned off.
      - b. This procedure will be followed in the future.
    4. Per statutory requirements as to why the meeting was not recorded, the Chair of the Council submitted a supporting affidavit why there was no recording.
    5. Mr. Berkovich filed an appeal, requesting clarification stating that the reason the Council went into closed door session, based upon the Agenda and Motion was at odds with Chair Garside's stated reason in his affidavit.
    6. He further argued that case law does not support a public body going into a closed-session to discuss the character, professional competence or physical

SAYS  
WHO?